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LETTER DATED 25 JUNE 1999 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

The Governing Council of the United Nations Compensation Commission held its thirty-second session in Geneva from 22 to 24 June 1999. The delegations of Kuwait, Iraq, India (on behalf of nine claimant countries), and Bosnia and Herzegovina addressed the Council during its opening plenary meeting.

During the session the Governing Council considered four reports and recommendations made by the Panels of Commissioners in the C, D and E1 categories of claims. The Council also considered a special report and recommendations made by the category D panel of Commissioners concerning 636 unresolved category A departure claims. The category C report, which marks the completion of the processing of category C claims, is concerned with individual claims for damages up to US$ 100,000, the category D report is concerned with individual claims for damages above US$ 100,000, and the category E1 reports are concerned with oil sector claims (see annexes I-XIII).

The following table shows the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council. The table does not include figures for amounts of compensation claimed in the category A and C claims, as the reports do not include this information as a matter of course.

Report	Amount of compensation claimed (United States dollars)	Amount of compensation awarded (United States dollars)
Seventh instalment of C claims	-	1 918 413 948
Third instalment of D claims	102 987 603	19 502 642
Second instalment of E1 claims	14 839 105 916	2 837 091 980
Third instalment of E1 claims	156 777 432	26 348 087
Special report on A claims	-	2 558 500

The Governing Council also considered the report of the Executive Secretary: summary of activities, covering the period from 10 February to 10 May 1999. The report covers the processing and payment of claims.

The Governing Council discussed several issues relating to the processing and payment of claims, including the priority of payment and payment mechanism for the second phase of payment and the recent increase in the number of withdrawals of corporate claims from the Commission.

The Governing Council continued its discussion and agreed upon a decision concerning the issue of priority of payment and payment mechanism for the second phase of payment, due to commence, upon completion of the first phase, in August 1999. The decision preserves the priority of payment to individual claimants (claiming up to $100,000 in categories A and C), with the aim of achieving full payment of all individual claims in these categories by the end of 2002, or earlier if possible. The decision also aims to provide meaningful compensation to individual claimants claiming over $100,000 and corporate and government claimants. It was decided that payments would be made, on an instalment basis, of $25,000 (or the unpaid principal amount of the award if less) to each successful claimant. Once this amount has been paid, a second payment of $75,000 (or the unpaid principle amount of the award if less) will be made. The Council also expressed its willingness to consider, at a later stage, the special circumstances pertaining to successful environmental monitoring and assessment claims and, in this context, to consider addressing the level and priority of payments to be made in respect of such claims.

The Governing Council discussed the matter of withdrawals of claims from the Commission, and requested that the Secretariat, in consultation with the Council, draft a letter to claimant Governments containing information about the decision on the priority of payment and the payment mechanism that could be circulated to corporate claimants. The Council also requested that it continue to receive information on the withdrawal of claims in future summary of activities reports, and that the issue remain on the agenda of the Council.

Finally, the Governing Council decided to hold its thirty-third session from 28 to 30 September 1999.

(Signed) Ambassador Hans J. HEINEMANN
President of the Governing Council

Annex I

Special report and recommendations made by the category D Panel of Commissioners concerning 636 Pakistani claims for departure from Iraq or Kuwait (category A claims)*

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* Previously issued as document S/AC.26/1999/8.

Introduction

1. This Special Report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission"), submitted pursuant to article 37(e) of the Provisional Rules For Claims Procedure ("the Rules") by the Panel of Commissioners appointed to review individual claims for damages above US$100,000 (i.e., the category "D" Panel). The category "D" Panel has been instructed by the Governing Council to review 639 Pakistani category "A" claims for departure from Iraq or Kuwait in the following special circumstances communicated to the Panel by the Commission's secretariat:

(a) On 5 August 1997, the Permanent Mission of Pakistan in Geneva notified the secretariat that, according to the records maintained by the Government of Pakistan, 639 category "A" (departure from Iraq or Kuwait) claims filed with the Commission were still pending in spite of the fact that the category "A" Panel of Commissioners had finalized its resolution of the claims in that category in October 1996. The Mission provided a list of the 639 claims in question and requested their consideration by the Commission on a priority basis. On 4 March 1998, the Mission renewed its request for a status report on the 639 category "A" claims.

(b) The discrepancy between the category "A" claims' numbers maintained by the Commission and those kept by Pakistan was resolved in August 1998 when it was discovered that the 639 claims in question had actually been filed with the Commission on 10 June 1993 by the Government of Pakistan as part of Lot 823. However, the computer diskette containing the claims submitted by the Government of Pakistan had been mislabelled as a duplicate of Lot 156, which had been previously filed by Pakistan. Since it was assumed that the diskette constituted a duplication of previously registered category "A" claims, the 639 Pakistani claims were never entered into the Commission's category "A" database. Not having been put into the database, the 639 claims were not resolved by the category "A" Panel of Commissioners in any of its six instalments of claims that were approved by the Governing Council between October 1994 and October 1996.

(c) At the thirty-first session of the Governing Council in March 1999, an information note was provided to the Council by the secretariat explaining that the failure to load the Pakistani diskette into the database meant that claimants for whom the Government of Pakistan had filed claims on time with the Commission have not yet had their claims resolved. In order to rectify the situation it would be necessary for these claims to be put before a Panel of Commissioners so that awards could be issued for the claimants. The Council's guidance was sought as to the manner in which to proceed to resolve the 639 Pakistani category "A" claims.

(d) Having considered the issue and the information note, the Governing Council, at the thirty-first session, accepted the recommendation of its Working Group that, rather than recalling the category "A" Panel of

Commissioners (which ceased functioning in October 1996) to consider the unresolved Pakistani claims, the claims would be put before the category "D" Panel of Commissioners. In reviewing the Pakistani claims, the category "D" Panel of Commissioners, which had deliberative sessions already scheduled for March and April 1999, was instructed by the Governing Council to apply the same processing methodologies (including evidentiary standards) that had been employed by the category "A" Panel of Commissioners. The category "D" Panel was also instructed to submit a special report and recommendations on the Pakistani claims to the Governing Council for consideration at its thirty-second session in June 1999.

2. Subsequent to the thirty-first Governing Council session, it was determined by the secretariat that the mislabelled computer diskette contained only 636 valid claims rather than 639, as indicated in the previously referenced notes of the Permanent Mission of Pakistan. One claim in the diskette was a duplicate of a claim already reported in the fourth instalment of category "A" claims. Two other entries in the diskette concerned non-existent claims.

3. The category "D" Panel notes that the category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 and that these claims are among the "most urgent claims" for which the Governing Council's decision on the "Criteria for Expedited Processing of Urgent Claims" (S/AC.26/1999/1) ("decision 1") has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief". Furthermore, the evidentiary standard applicable to category "A" claims is stated in decision 1 and more specifically in article 35(2)(a) of the Provisional Rules for Claims Procedure, which reads:

> "For the payment of fixed amounts in the case of departures, claimants are required to provide simple documentation of the fact and date of departure from Iraq or Kuwait. Documentation of the actual amount of loss will not be required".

4. The expedited procedures prescribed by article 37(a) of the Rules envisaged that in the initial phase the secretariat would check individual claims by matching them, insofar as possible, against the information in its computerized database, and that the results of the database analysis may be cross-checked by the Panel. The next processing phase relates to claims that could not be verified through the computer database. Article 37(b) of the Rules provides that, if the volume of these claims is large, the Panel may check individual claims on the basis of sampling with further verification as circumstances warrant. After resolving close to 350,000 category "A" claims in the first three instalments submitted to it through matching, the category "A" Panel commenced the second phase of verification on the basis of sampling, as envisaged by article 37(b) of the Rules.

5. As it was no longer feasible to revive the computerized programme used by the category "A" Panel in its first three instalments to "match" claimant data with arrival/departure data, the category "D" Panel has confined its analysis of the 636 Pakistani category "A" claims to the sampling procedures employed by the category "A" Panel for its fourth to sixth instalments. The methodology employed by the category "A" Panel of Commissioners in verifying claims by means of sampling was described in that Panel's Report and Recommendations Concerning the Fourth Instalment of Claims for Departure from Iraq or Kuwait (Category "A" Claims) (S/AC.26/1995/4) in paragraphs 45 to 88.

6. While establishing the sampling methodology, the category "A" Panel reviewed the law and practice under international law and national jurisdictions and drew attention to the growing acceptance and application of the principle of adjudication on the basis of sampling and test cases in situations involving a large number of cases or claims raising common issues of law or fact. This has been prompted by the realization of the inappropriateness of the traditional method of individualized adjudication in the case of mass claims and analogous situations. In regard to the application of the sampling methodology, the category "A" Panel observed in its Fourth Instalment Report:

> "Since determining the appropriate sample is a statistical exercise, professional statisticians were consulted for the purpose of calculating the size and defining the composition of the samples. In light of the lack of homogeneity among the claims submissions from and the processing used by the various submitting countries and international organizations it was decided that the sampling operation should be country-specific (rather than across all category "A" claims) so as to increase the homogeneity of the population from which the samples were to be chosen, and thereby to improve the results of the extrapolation." (Paragraph 46.)

I. BACKGROUND TO PAKISTANI CATEGORY "A" CLAIMS

7. 32,247 category "A" departure claims from Pakistan were entered into the Commission's database. Of that figure, 31,836 were determined to be successful by the category "A" Panel of Commissioners and the corresponding claimants were awarded a total of US$124,992,500 in compensation by the Governing Council. With respect to the 411 Pakistani category "A" claims for which no compensation was recommended, 410 were found to be duplicates of claims for which compensation had already been awarded. Only one Pakistani category "A" claim was rejected by the category "A" Panel on the basis that the evidence provided demonstrated that the claimant departed from Iraq or Kuwait outside the Commission's relevant jurisdictional period of 2 August 1990 to 2 March 1991.

8. The category "A" Panel of Commissioners' resolution of the Pakistani claims took place over the course of six instalments between 3 June 1994 and

16 October 1996. During the first three instalments of category "A" claims, 7,808 Pakistani claims were approved by means of the category "A" Panel's application of the expedited processing procedures provided by article 37(a) of the Rules that involved verification by "matching" the claims against information in the Commission's computerized database. In the fourth, fifth and sixth instalments of claims, the category "A" Panel approved 24,028 Pakistani claims by verifying individual claims on the basis of sampling, an expedited procedure authorized by article 37(b) of the Rules.

9. The category "D" Panel notes that, had the mislabelled Pakistani claims diskette been entered into the Commission's category "A" database at the time of its filing with the Commission in June 1993, the 636 claims in question would have been subjected to the same expedited claims processing procedures as the 32,247 other Pakistani claims resolved by the category "A" Panel. The task for the category "D" Panel therefore is to satisfy itself that the claims that may be approved by it out of the 636 mislabelled Pakistani category "A" claims share the same claims profile and possess the same types of supporting evidence as the 24,028 other Pakistani claims that were approved by the category "A" Panel prior to October 1996 by application of the sampling methodology.

II. THE CATEGORY "A" PANEL'S ANALYSIS OF THE PAKISTANI DEPARTURE CLAIMS

10. In conducting its sample of the Pakistani category "A" claims, the category "A" Panel of Commissioners examined the types of evidence provided by 290 claimants to prove their presence in Iraq or Kuwait as of 2 August 1990 and their subsequent departure between the time of Iraq's invasion of Kuwait and 2 March 1991. The category "A" claim form listed seven types of documents that the claimants could submit in support of their claims. Claimants were required by the category "A" claim form to indicate the evidentiary items that they attached to their forms. For this purpose, claimants could tick one or more of six boxes representing the following types of evidence: Copy of Official ID issued by Iraq or Kuwait, Used Tickets, Visa/Passport Stamp, Boarding Pass, Receipts/Bills and Other.

11. In addition, the category "A" claim form also requested the Pakistani claimants to attach a statement to their claims including the address of the claimants' last residences and the last places of work in Iraq or Kuwait and to describe how they travelled from Iraq or Kuwait back to Pakistan. Although the category "A" paper claim form did not provide a tick box for claimants to check whether they had included such statements, the category "A" Data Capture System software (DCS) did. Thus, it was possible for the category "A" Panel to analyze the distribution of evidence among the entire Pakistani category "A" claims population, including whether the required additional statement had been submitted, by means of a review of the category "A" claims database. By analyzing the information in the database, the category "A" Panel was able to ascertain how many Pakistani category "A" claimants had attached Official IDs, Used Tickets, the required additional statement, etc. to their claims forms.

12. Evidence of Pakistani category "A" claims that clearly demonstrated departure from Iraq or Kuwait during the jurisdictional period was assessed as "conclusive" by the category "A" Panel of Commissioners. In reviewing its sample of Pakistani category "A' claims, the category "A" Panel of Commissioners determined that 96 per cent of the sample claims conclusively demonstrated their departure from Iraq or Kuwait during the jurisdictional period. More importantly, 99 and 98 per cent of the Pakistani claimants attaching the two most common types of supporting documentation to their claims forms, i.e., Official IDs and Visa/Passport Stamps, were respectively found to have conclusively demonstrated their departure from Iraq or Kuwait. With the percentage of "conclusive" claims within the most common evidentiary types being so high, the category "A" Panel of Commissioners was able to extrapolate the results of the sample to the entire Pakistani category "A" claims population and recommended that all Pakistani claimants in the overall population of claims submitting the same types of "conclusive" evidence would be entitled to compensation. In this way, the category "A" Panel of Commissioners recommended compensation for 24,028 Pakistani category "A" claims.

III. THE PANEL'S REVIEW OF THE 636 PREVIOUSLY UNPROCESSED PAKISTANI CATEGORY "A" CLAIMS

13. In order to determine whether the conclusions reached by the category "A" Panel of Commissioners could be applied to the 636 Pakistani category "A" claims included in the mislabelled diskette, the category "D" Panel needed to assure itself that the 636 claims fit the profile of the overall Pakistani category "A" claims population. In addressing this issue, the category "D" Panel made use of a Summary Report of computerized claims information that the secretariat prepared, which compared the types of evidence provided by the 32,247 Pakistani category "A" claimants as a whole to the 636 specific claims under review. The Summary Report is attached as an appendix to this Report. The category "D" Panel also viewed some of the files in electronic format to be able to test the application of the sample developed by the category "A" Panel. The category "D" Panel's analysis showed that the evidentiary profile of the 636 claims matched very closely that of the entire Pakistani category "A" population. While 75.34 per cent of the total claims population had submitted Official ID evidence, 76.46 per cent of the 636 claims had done likewise. Similarly, 83.02 per cent of the total claims population had provided Visa/Passport Stamp evidence and 81.6 per cent of the 636 claimants had done the same. Finally, while 99.28 per cent of the total Pakistani claims population had attached a statement to their claim forms, 100 per cent of the 636 claimants had done so.

14. Accordingly, based on the category "D" Panel's comparative analysis of the evidence attached to the claim forms, the 636 Pakistani category "A" claims under review have been found by the category "D" Panel to accord with the profile of the Pakistani category "A" claims population as a whole. Having reached this conclusion, the category "D" Panel has determined that the 636 Pakistani category "A" claimants are entitled to the same

recommendation as to compensation made by the category "A" Panel of Commissioners with regard to the overall population of category "A" claims.

IV. RECOMMENDED COMPENSATION FOR THE 636 PAKISTANI CATEGORY "A" CLAIMS

15. Pursuant to article 37(e) of the Rules, the category "D" Panel presents its recommendations regarding the 636 Pakistani category "A" claims. Having considered the results of the analysis of the verification of the category "A" claims through sampling and having reviewed the evidence submitted to it in support of the claims at issue, the category "D" Panel recommends the payment of compensation for the 636 claims submitted by the Government of Pakistan on 10 June 1993 in Lot 823 in the total amount of US$2,558,500.

16. On the basis of the considerations formulated in Part IV, section C, sub-section 3. of the first report of the category "A" Panel, the category "D" Panel recommends that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council's decision on "Awards of Interest" (S/AC.26/1992/16) ("decision 16"). The category "D" Panel also adopts the view expressed by the category "A" Panel that the phrase "the date the loss occurred" in decision 16 should be interpreted to be a single date for all category "A" claims and that the date of invasion, 2 August 1990, should serve as the fixed date.

Geneva, 27 April 1999

(*Signed*) R.K.P Shankardass
Chairman

(*Signed*) H.M. Joko Smart
Commissioner

(*Signed*) M.C. Pryles
Commissioner

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Appendix

Summary report

Pakistan
(Mislabelled claims)

1. Submitting entity: Pakistan

2. Total No. of claims (excluding 636 claims): 31,813

3. Total No. of mislabelled claims: 636

Type of evidence claims	Percentage and total per type in claims population	Percentage and total per type in 636 mislabelled claims
I. Official ID	75.34% (23,968)	76.42% (486)
II. Used Tickets	3.90% (1,242)	1.42% (9)
III. Visa/Passport Stamp	83.02% (26,410)	81.60% (519)
IV. Boarding Pass	2.96% (942)	0.63% (4)
V. Receipts/Bills	2.86% (909)	0.47% (3)
VI. Other	17.73% (5,640)	5.19% (33)
VII. Statement	99.28% (31,584)	100.00% (636)

Annex II

Decision concerning 636 Pakistani claims for departure from Iraq or Kuwait (category A claims) taken by the Governing Council of the United Nations Compensation Commission at its 88th meeting, held on 24 June 1999 at Geneva*

The Governing Council,

Having received, in accordance with article 37 of the Provisional Rules for Claims Procedure, the special report and recommendations made by the category "D" panel of Commissioners concerning 636 Pakistani claims for departure from Iraq or Kuwait (category "A" claims), covering six hundred and thirty-six individual claims [1]

1. Approves the recommendations made by the Panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules to approve the amounts of the recommended awards concerning the claims covered in the report as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Pakistan	636	0	2,558,500

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* Previously issued as document S/AC.26/Dec.67 (1999).

[1] The text of the report appears in annex I to the present report. In conformity with the provisions on confidentiality in the Provisional Rules for Claims Procedure (article 30 paragraph 1, and article 40 paragraph 5), a table containing the breakdown of the amount to be paid to each individual claimant will not be made public, but will be provided to the Government of the Islamic Republic of Pakistan separately.

3. Reaffirms that when funds become available payments shall be made in accordance with the decision 17 [S/AC.26/Dec.17 (1994)],

4. Decides that the claims included in the report shall be paid at the same time as successful claimants in the seventh instalment of category "C" claims are paid,

5. Recalls that when payments are made in accordance with decision 17 [S/AC.26/Dec.17 (1994)] and pursuant to the terms of decision 18 [S/AC.26/Dec.18 (1994)], Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

6. Requests the Executive Secretary to provide copies of the report to the Secretary-General and to the Government of the Republic of Iraq, and to provide a copy of the report and the table containing the amount to be paid to each individual claimant to the Government of the Islamic Republic of Pakistan.

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Annex III

Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of individual claims for damages up to $100,000 (category C claims)*

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* Previously issued as document S/AC.26/1999/11.

CONTENTS

	Paragraphs	Page
List of relevant Governing Council decisions		20
List of category "C" loss types		21
Introduction	1 - 5	22
I. LEGAL FRAMEWORK AND GENERAL ISSUES RELATING TO THE PROCESSING OF CATEGORY "C" CLAIMS	6 - 36	23
A. Subject matter jurisdiction	8 - 9	23
B. Jurisdictional period	10 - 12	24
C. Location of loss	13	25
D. Eligible claimants	14 - 26	25
1. Iraqi nationals	14 - 15	25
2. Members of the Allied Coalition Forces .	16	25
3. Detained or missing persons	17 - 19	26
4. Family members eligible to submit death and MPA claims	20	26
5. Claims submitted by a third person . . .	21 - 25	27
6. Claims for individual business losses .	26	28
E. Causation	27 - 30	28
F. Evidentiary standard for category "C" claims	31 - 35	29
G. Currency exchange rate	36	30
II. CATEGORY "C" CLAIMS PROCESSING	37 - 48	31
A. Mass claims processing	37 - 41	31
B. Registration and organization of claims data	42 - 45	32
C. Electronic processing of category "C" claims	46 - 48	33
III. CLAIMS EVALUATION AND COMPENSATION METHODOLOGIES	49 - 83	34
A. Threshold issues common to category "C" claims in all instalments	49 - 83	34
1. Claimant identity and presence or residence in Iraq or Kuwait	49 - 51	34
2. Completion errors and correction efforts	52 - 53	35
3. Multiple recovery and duplicate claims .	54 - 83	35
(a) Intra-category duplicate claims . .	54 - 59	35
(b) Inter-category duplicate claims . .	60 - 77	37
(c) Multiple recovery due to compensation from non-Fund sources	78 - 83	42

/...

	Paragraphs	Page
IV. EVALUATION METHODOLOGIES AND COMPENSATION CRITERIA	84 - 370	43
A. Loss type "C1": damages arising from departure, inability to leave or return, decision not to return, hostage-taking or other illegal detention	84 - 112	43
1. Damages arising from departure, inability to leave or return or decision not to return ("C1-Money" losses)	84 - 93	43
(a) Experience of the first instalment .	85 - 89	44
(b) Refinement of the processing and valuation methodology since the first instalment	90 - 92	45
(c) Recommendations for claims for C1-Money losses in the seventh instalment . .	93	46
2. "C1-MPA" losses: claims for mental pain and anguish arising from hostage-taking, illegal detention or being forced to hide . . .	94 - 112	47
(a) Claims for C1-MPA losses for hostage-taking or illegal detention for three days or less	96 - 99	47
(b) Claims for C1-MPA for hostage-taking or illegal detention for more than three days	100 - 104	49
(c) Claims for C1-MPA for forced hiding	105 - 110	51
(d) Confusion between "mental pain and anguish" submitted as "serious personal injury" in category "B" with C1-MPA losses	111 - 112	52
B. Loss type "C2": damages arising from personal injury	113 - 141	53
1. C2 claims for medical expenses ("C2-Money" claims)	115 - 134	53
(a) Experience of the first instalment .	115 - 118	53
(b) Development of personal injury jurisprudence since the first instalment	119 - 120	55
(c) Findings of the Panel in the seventh instalment	121 - 134	56
2. C2 claims for mental pain and anguish ("C2-MPA" claims)	135 - 141	60

Paragraphs Page

(a) Findings of the Panel in the first instalment . . . . 135 - 137 60
(b) Findings of the Panel in respect of Claims for C2-MPA included in the seventh instalment . . . . 138 - 140 61
(c) Recommendations for claims for C2-MPA included in the seventh instalment . 141 62
C. Loss type "C3": damages arising from the death of the claimant's spouse, child or parent . 142 - 143 62
  1. Claims for C3 death losses for pecuniary amounts ("C3-Money" losses) . . . . . . 144 - 173 63
    (a) Experience of the first instalment . 144 - 147 63
    (b) Development of death loss jurisprudence since the first instalment . . . . 148 - 149 64
    (c) Findings of the Panel in the seventh instalment . . . . 150 - 173 65
  2. Claims for C3 mental pain and anguish for death of a spouse, child or parent ("C3-MPA" losses) . . . . 174 - 177 72
    (a) Experience of the first instalment . 174 - 175 72
    (b) Findings of the Panel in respect of claims for C3-MPA included in the seventh instalment 176 72
    (c) Recommendations for claims for C3-MPA included in the seventh instalment 177 73
D. Loss type "C4": damages arising from personal property losses . . . . 178 - 221 73
  1. C4 damages arising from losses of clothing, personal effects, household furnishings and other personal property items ("C4-CPHO" losses) . . . . 178 - 199 73
    (a) Experience of the first instalment . 179 - 189 73
    (b) Refinement of the processing and valuation methodology since the first instalment . . . . 190 - 198 76
    (c) Recommendations for claims for C4-CPHO losses in the seventh instalment . . 199 78

	Paragraphs	Page
2. Claims for C4 motor vehicle losses ("C4-MV")	200 - 221	78
(a) Findings of the Panel in the first instalment	200 - 209	78
(b) Findings of the Panel since the first instalment	210 - 220	81
(c) Recommendations for claims for C4-MV losses in the seventh instalment . .	221	85
E. Loss type "C5": damages arising from losses from bank accounts, stocks and other securities	222 - 248	85
1. Claims for losses arising from bank accounts ("C5-BA")	223 - 238	86
(a) Claims for losses arising from bank accounts in Kuwait	226	86
(b) Claims for losses arising from bank accounts in Iraq	227 - 238	87
2. Claims for losses arising from stocks or securities ("C5-SOS")	239 - 248	90
(a) Findings of the Panel in the first instalment	239 - 242	90
(b) Commission jurisprudence since the first instalment	243	91
(c) Findings of the Panel for C5-SOS losses in the seventh instalment	244 - 247	91
(d) Claims for C5-SOS losses in the seventh instalment	248	92
F. Loss type "C6": damages arising from loss of income, unpaid salaries or support	249 - 300	92
1. Losses relating to unpaid salaries and other income ("C6-Salary" losses) . . .	250 - 282	92
(a) Findings of the Panel in the first instalment	250 - 258	92
(b) Evolution of C6-Salary methodology since the first instalment	259 - 282	95
2. Losses related to support on the "C6" page ("C6-Support")	283 - 291	101
(a) Findings of the Panel in the first instalment	283 - 285	101

	Paragraphs	Page
(b) Jurisprudence of the Commission in respect of employment-related support losses	286	102
(c) Findings of the Panel in the seventh instalment	287 - 290	102
(d) Recommendations for claims for C6-Support losses in the seventh instalment . .	291	103
3. Claims for MPA on the "C6" page ("C6-MPA")	292	103
(a) Findings of the Panel in the first instalment	293 - 294	104
(b) Findings of the Panel in the second instalment	295	104
(c) Findings of the Panel in the seventh instalment	296 - 298	104
(d) Recommendations for claims for C6-MPA losses in the seventh instalment . .	299	105
G. Loss type "C7": damages arising from real property-related losses ("C7" real property)	301 - 327	105
1. Findings of the Panel in the first instalment	301 - 305	106
(a) Fact of ownership of C7 property . .	306	107
(b) Fact of loss and causal relation to invasion	307	107
(c) Valuation of claims for C7 repair costs	309 - 310	107
(d) Valuation of claims for C7 losses of rental income	310 - 312	108
(e) Claims for C7 real property losses located outside Kuwait	313	108
2. Findings of the Panel in the seventh instalment	314	109
(a) Claims for C7 real property losses located in Kuwait	315 - 319	109
(b) Claims for C7 real property losses located outside Kuwait	320 - 325	110
(c) Recommendations for claims for C7 real property losses in the seventh instalment	326	112
H. Loss type "C8": damages arising from individual business losses ("C8-Business")	327 - 369	112

/...

	Paragraphs	Page
1. Legal framework for consideration of C8-Business losses	327 - 329	112
2. Findings of the Panel in the first instalment	330 - 342	113
(a) Composition of claims considered in the first instalment	330	113
(b) Business practice in Kuwait and the "rent-a-permit" system	331 - 332	113
(c) Erroneous completion of claims form	333	114
(d) Criteria for compensability in the first instalment	334 - 340	114
(e) Valuation in the first instalment	341	116
3. Finding of the Panel in the seventh instalment	342 - 368	116
(a) Eligibility of claimants	343 - 346	117
(b) Situs of the business outside Iraq or Kuwait	347 - 350	117
(c) Situs of the business in Israel . .	351 - 354	118
(d) Review of claims submitted by Pakistan for "other losses" ("CS-Other") . .	355	119
(e) Processing methodology for the seventh instalment	356 - 367	119
(f) Recommendations for claims for C8-Business losses included in the seventh instalment	368	124
I. Loss type "C9": claims for other damages ("CS-OT")	369	124
V. CLAIMS INCLUDED IN THE SEVENTH INSTALMENT	370 - 373	124
VI. RECOMMENDATIONS	374 - 375	126
Notes		131

LIST OF TABLES

1. Level of evidence submitted in support of C8-Business losses for claimant groups sampled 121
2. Sectoral distribution of claimants for C8-Business losses 122
3. C8-Business losses per sector per submitting entity 122
4. Hypothetical calculations for C8-Business losses . 124
5. Summary of seventh instalment recommendations . . 127

/...

List of relevant Governing Council decisions

Decision number	Title	Document number
1	Criteria for Expedited Processing of Urgent Claims	S/AC.26/1991/1
3	Personal Injury and Mental Pain and Anguish	S/AC.26/1991/3
4	Business Losses of Individuals Eligible for Consideration under the Expedited Procedures	S/AC.26/1991/4
5	Guidelines relating to paragraph 19 of the Criteria for Expedited Processing of Urgent Claims	S/AC.26/1991/5
7	Criteria for additional Categories of Claims	S/AC.26/1991/7/Rev.1
8	Determination of Ceilings for Compensation for Mental Pain and Anguish	S/AC.26/1992/8
9	Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation	S/AC.26/1992/9
10	Provisional Rules for Claims Procedure	S/AC.26/1992/10
11	Eligibility for Compensation of Members of the Allied Coalition Forces	S/AC.26/1992/11
12	Claims For Which Established Filing Deadlines Are Extended	S/AC.26/1992/12
13	Further Measures to Avoid Multiple Recovery of Compensation by Claimants	S/AC.26/1992/13
15	Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause	S/AC.26/1992/15
21	Multi-Category Claims	S/AC.26/Dec.21 (1994)
24	Multi-Category Departure Claims	S/AC.26/Dec.24 (1994)

List of category "C" loss types

Short name	Description of loss
C1-Money	Losses related to departure and relocation costs
C1-MPA	MPA from being illegally detained, held hostage or forced to hide
C2-Money	Medical or other expenses related to personal injury
C2-MPA	MPA from suffering a serious personal injury or from witnessing the intentional infliction of serious personal injury on a spouse, child or parent
C3-Money	Lost support from a deceased spouse, child or parent (C3-Support) or medical, burial or other expenses relating to the death of a spouse, child or parent (C3-Other)
C3-MPA	MPA from the death of a spouse, child or parent or from witnessing the intentional infliction of events leading to the death of a spouse, child or parent
C4-CPHO	Losses related to personal property, including clothing, personal effects, household furnishings and other losses
C4-MV	Losses related to motor vehicles: theft, total loss (C4-MV) or repairs (C4-MV-Repairs)
C5-BA	Losses related to bank accounts in Iraq or Kuwait
C5-SOS	Losses related to stocks or securities
C6-Salary	Losses related to income or salary
C6-Support	Losses related to support
C6-MPA	MPA arising from the deprivation of all economic resources so as to seriously threaten the claimant's survival and that of the claimant's spouse, children or parents
C7-Repairs	Losses related to repairs made to real property
C7-Other	Lost rental income and other losses related to real property
C8-Business	Losses related to business activities of individuals
CS-Other	Any other damages not covered by the above

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Introduction

1. This is the seventh and final report to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$100,000 ("category 'C' claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure [1] (the "Rules"). This report contains the determinations and recommendations of the Panel in respect of the seventh instalment comprising 71,069 category "C" claims submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. As happened with the Panel's first report, approved by the Governing Council in December 1994, but which has not occurred at any time since, this seventh report includes category "C" claims containing all loss elements and discusses the evaluation methodologies and compensation criteria approved by the Panel for each loss type for which compensation may be requested in the category "C" claim form. In accordance with its previous practice, the Panel has reviewed the seventh instalment of category "C" claims in a continuum with the processing of the first six instalments. The seventh report should be considered together with the first six reports, [2] all of which have been approved by the Governing Council. [3] The claims included in this report have therefore been processed in accordance with previous determinations and decisions approved by the Governing Council.

3. In contrast to previous reports, however, this report not only reflects the claims reviewed and the work performed by the Panel since it issued its recommendations concerning the sixth instalment of category "C" claims in June 1998, it also summarizes issues contained in the claims reviewed in previous reports. It describes the criteria developed or refined by the Panel for each loss element as well as the compensation methodologies applied. As such, this report reflects the final statement of work performed by the Panel and completes the processing of the more than 420,000 individual category "C" claims received by the Commission.

4. It is anticipated that at least one report containing corrections to category "C" claims pursuant to article 41 of the Rules will be issued at some time subsequent to this report. Therefore, no corrections to amounts awarded to category "C" claims reported in previous instalments are included in this seventh instalment report.

5. To complete all tasks related to the processing of the seventh instalment of category "C" claims, the Panel met with the secretariat at the Commission's headquarters in Geneva on 15-16 June 1998, 30 September-1 October 1998 and 30 March 1999 in addition to regular communications with the secretariat and ongoing review of work-in-progress.

I. LEGAL FRAMEWORK AND GENERAL ISSUES RELATING TO THE PROCESSING OF CATEGORY "C" CLAIMS

6. In its review of all category "C" claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council decisions, the Rules, and other relevant principles and practices of international law. In addition to the loss and identifier information presented in the claims, the Panel has also taken into account the following: information accompanying the submission of the seventh instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; further communications by submitting Governments and international organizations providing background information related to their claims; and relevant United Nations and other reports.

7. Throughout the processing of category "C" claims, decision 1 of the Governing Council [4] has had particular relevance in defining the Panel's mandate. In decision 1, the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be the "most urgent" claims. Accordingly, decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures such as "checking individual claims on a sample basis, with further verification only if circumstances warranted". Consistent with this decision, article 35(2) of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims for smaller amounts, such as "those below US$20,000".

A. Subject matter jurisdiction

8. The subject matter jurisdiction for category "C" claims is defined in Governing Council decisions 1, 3, 4, 8, and 11. These decisions establish, inter alia, the types of losses that are compensable under category "C". In particular, paragraph 14 of decision 1 provides that compensation in respect of category "C" losses will apply to death or personal injury, or to losses of income, support, housing or personal property, or medical expenses or costs of departure, as a result of Iraq's unlawful invasion and occupation of Kuwait up to US$100,000 per person. Decision 3 further establishes seven categories of mental pain and anguish ("MPA") losses for which compensation may be awarded while decision 8 provides guidance for MPA awards and establishes maximum MPA award amounts. Decision 4 describes the types of business losses of individuals that may be eligible for consideration under the expedited procedures. Decision 11 provides for the eligibility of compensation for loss or injury of members of the Allied Coalition Forces.

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9. The category "C" claim form approved by the Governing Council contains further elaboration of the particular losses that may be claimed in category "C" on eight separate loss pages. In addition, there is a ninth category of loss known as "any other damages" for which the claimant must include a schedule that provides the details of what happened, a description of damages, and total value of loss. As a result, one category "C" claim form may constitute the aggregate of more than twenty different types of damages. Based on an estimated average of three loss types for which compensation may be requested per claim, the resolution of the approximately 420,000 category "C" claims has involved the processing of up to 1.3 million separate loss elements. Each of these diverse loss elements requires the application of a separate set of criteria for determination of loss compensability, a separate valuation method and a separate processing methodology.

B. Jurisdictional period

10. In its First Report, the Panel concurred with the determination of the Panel of Commissioners for category "B" claims ("the 'B' Panel")[5] that, in principle, the events giving rise to claimants' losses should have occurred between 2 August 1990 and 2 March 1991 to be attributable to Iraq's activities associated with its invasion and occupation of Kuwait. The occurrence of loss outside that time frame imposes, in general, an extra burden on a claimant to explain why the loss should be considered a direct result of Iraq's invasion and occupation of Kuwait.[6]

11. The Panel took note of the Governing Council's decision 12,[7] however, and concurred with the "B" Panel's findings that serious personal injuries or deaths that occurred after the relevant time period could be compensable where the cause of an injury or a death could be linked to the invasion and occupation and specifically when the personal injury or death resulted from a mine explosion.[8] Further, the Panel determined that those claimants departing from Iraq or Kuwait after the jurisdictional period who could establish the presence of "special circumstances", such as an inability to depart from Iraq or Kuwait due to being held hostage, or otherwise being detained by Iraqi authorities, were not precluded from receiving compensation for their departure and relocation losses.[9]

12. In its Sixth Report, the Panel also determined that departure from Iraq or Kuwait prior to the jurisdictional period may not, in and of itself, be a bar to compensation for losses arising from an inability to return or a decision not to return to Iraq or Kuwait.[10] Such losses may be compensable so long as the pre-invasion departure date is no earlier than 1 June 1990 and a Kuwaiti civil identification number or an Iraqi residency permit number is indicated in the relevant electronic field.[11]

C. Location of loss

13. The Panel determined in the First Report that, subject to the requirements that must be met for a claimant to be eligible for compensation under particular category "C" losses, the Commission has jurisdiction over a claim regardless of where the loss occurred. However, the Panel found that where the losses occurred in Iraq or Kuwait, they can more easily be attributable to Iraqi actions, whereas losses based on events occurring outside Kuwait or Iraq need to be more fully substantiated. [12]

D. Eligible claimants

1. Iraqi nationals

14. Decision 1, paragraph 17, provides that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State". Forty-seven category "C" claims indicated "Iraqi" in either the "nationality" or the "dual nationality" fields of the claimant identification page of the electronic claim form. All of those claims were reviewed manually and, where the Panel determined that there was ambiguity, additional information was solicited from the submitting Governments concerned.

15. After studying the facts in respect of the category "C" claims identified, and with particular reference to the considerations of the Panel of Commissioners for category "A" claims ("the 'A' Panel") in its decision, [13] the Panel, in its Sixth Report, endorsed the "A" Panel's holding on eligibility of Iraqi dual nationals to submit claims to the Commission. Thus, based on the facts before it, the "C" Panel held that a claimant with Iraqi dual nationality who had applied for or acquired a second nationality before the criteria for claims eligibility had been established by the Governing Council in decision 1 on 2 August 1991 ("the relevant date"), should be considered to be a bona fide holder of the second nationality. [14] Using that standard, the Panel recommended in the Sixth Report that compensation be awarded for 40 of the 47 claims reviewed. Seven claims were rejected for failure of the claimants to establish that they were bona fide holders of a second nationality. [15]

2. Members of the Allied Coalition Forces

16. Decision 11 provides that "members of the Allied Coalition Armed Forces are not eligible for compensation for loss or injury arising as a consequence of their involvement in Coalition military operations against Iraq" except under certain specified conditions. [16] To the extent that such claims have been identifiable in category "C", it has been in the context of hostage-taking situations and personal injuries in which claimants met the three conditions specified.

3. Detained or missing persons

17. As was the case with the first instalment, this final instalment includes category "C" claims submitted on behalf of individuals who are asserted to be either still missing or in detention in Iraq. In the First Report, the Panel concluded, in accordance with decision 12 of the Governing Council, that claims submitted for MPA suffered by individuals alleged to be held in detention by the Government of Iraq may not be considered for compensation while the individual's status remains unknown.[17] Also in accordance with decision 12, claims for MPA suffered by detainees should be submitted by the detainees within one year of their release. Alternatively, once a Government has determined that a detainee or missing person is deceased, the family of the deceased may submit a claim, together with the appropriate documentation, for the death of the deceased.

18. Throughout the category "C" claims programme, communications have been received from submitting Governments that have provided clarification of the circumstances for various category "C" claimants with "missing or detained" status. In such cases, the claims have been recommended for resolution accordingly. Further, using the names and identifier data of category "C" claimants having a "missing or detained" status in the electronic database, the secretariat has performed cross-matching exercises against names and identifier data of deceased persons. In this manner, four such claims have been resolved in this seventh instalment.

19. The 331 claims for which no additional information has been received, or for which checks to ascertain final status have produced no results, will remain in pending status until such time as the Executive Secretary determines that the processing of all remaining claims before the Commission is likely to take no more than one year to complete and so notifies the Governing Council pursuant to decision 12, paragraph 2. As part of this seventh instalment, each Government with claimants who remain in such pending status will receive a list of the claimants concerned.

4. Family members eligible to submit death and MPA claims

20. In its First Report, the "C" Panel adopted generally the "B" Panel's conclusions [18] on the definition of "family", where relevant to category "C" claims. The Panel concluded that for claims for the death, or for witnessing the intentional infliction of events leading to the death or injury of a family member, or for the family ceilings for MPA established in decision 8,, the "family unit" is composed of the deceased person, the injured person or the person who was deprived of all economic resources, that person's parents, all of his or her children, and his or her spouse.[19] Specifically, the Panel also adopted the "B" Panel's conclusions in respect of the particular situation where a deceased person has more than one legally recognized wife. In such cases, the Panel considers that each wife

and the children born from that union constitute a separate "family unit" for the purposes of applying the MPA ceiling.

5. Claims submitted by a third person

21. Category "C" claims are intended to be submitted by each individual who actually incurred the losses or injuries resulting directly from Iraq's invasion and occupation of Kuwait. However, as was the case in the first instalment, there are cases of claims being submitted by persons other than those who incurred the losses. The Panel confirms that, as a general rule and subject to the specific guidelines established by the Governing Council for death and MPA claims, individuals other than the persons actually incurring the loss(es) are not entitled to submit category "C" claims.[20]

22. In consideration of the fact that some persons may be considered to be legally entitled to claim on behalf of another, e.g., a parent for a minor child, a person acting under a power of attorney received from the rightful claimant or pursuant to a court decision, the Panel recognized that this rule must be applied taking due account of the circumstances of the situation. Further, the concept of the family as a unit should be borne in mind, as well as the legal competence or ability of the rightful claimant. Thus, the Panel recognized the fact that in several situations one claimant may have submitted one claim on behalf of the family for the property, employment or MPA losses suffered by every member. This has, however, resulted in a situation where "multiple" claims were created in a category that was essentially intended to reflect the losses of one individual per claim submission.[21]

23. So long as the losses claimed in category "C" claims were related to MPA suffered by living family members or encompassed one loss, e.g., for personal property on behalf of the family, the claims were generally processed as is, with modification as deemed to be necessary in the interest of equitable treatment. Claims were distinguished as "multiple" claims in two instances: (a) when two or more identifiable individuals submitted one claim for separately identified non-MPA losses together in one claim file with one assigned claim number; or (b) when two or more claims were submitted by individuals related to each other (usually family submissions) under separate claim numbers.[22] In the former situation, the Panel's concern was that the individual claimants could be potentially disadvantaged by the US$100,000 category limitation. In the latter, the Panel's concern was with unidentified overlap and double-claiming for the same loss elements.

24. Approximately 1,200 claims were identified as reflecting both of these concerns. The claims were set aside for review for "multiple" claim issues and, following that review, have been included in this seventh instalment. The review adjusted losses claimed in related separate claims as appropriate and also confirmed that most claims that were included in

one submission concerned separate employment-related losses of spouses. If there was a clear intention to submit the claim as one claim, so long as no existing claim in the name of the other claimant(s) could be located and none would be clearly disadvantaged by the category limitation on recovery, the claim was left as a single submission, with a separate loss page created to reflect the employment loss of the spouse.

25. However, in cases where there was a clear intention to submit claims separately, [23] so long as duplicate claims did not exist and amounts could be adjusted so that double recovery for the same losses would be avoided, the secretariat recommended that the claims be separated and individual category "C" claims be created. As a result, the Panel determined that twelve of the claims reviewed be separated to reflect the actual number of individual claimants. The new claims were assigned claim numbers accordingly for application of the loss criteria and methodologies in this instalment. [24]

6. Claims for individual business losses

26. Decision 1 provides that business losses of individuals may be submitted under category "C". Decision 4 describes the categories of individual claimants who are eligible to claim. Losses suffered by a business entity with separate legal personality may not be claimed in category "C". Thus, as discussed more fully in section IV *infra*, the Panel has determined that 103 claims for business losses where the business is a corporation or otherwise has separate legal personality are not eligible for consideration in category "C".

E. Causation

27. Security Council resolution 687 (1991) describes in comparatively broad terms the types of losses for which compensation is available and the parties who are eligible to claim for compensation. However, it limits Iraq's liability to payment of compensation for "direct" loss, damage or other injury. Therefore, throughout its consideration and review of category "C" claims, the Panel's substantive focus has been to distinguish between direct losses that are compensable and indirect losses that are not.

28. Guidance in respect of direct and indirect losses is provided in decision 1 at paragraph 18. [25] In addition, in decision 15, the Governing Council stated that the guidelines in decision 1 were not intended to be exhaustive and that there would be other situations where evidence can be produced showing that claims are for direct loss. [26] Decision 1 further states that compensation will not be provided for losses suffered as a result of the trade embargo and related measures. Decision 15 clarifies at paragraph 3 that losses suffered solely as a result of that embargo are not

compensable because the causal link between the invasion and the loss is not sufficiently direct.

29. In its First Report the Panel also considered relevant rules and principles of international law, noting that the terms "direct" and "indirect" are used synonymously with "proximate" and "remote" and that the most commonly used test in damage claims was whether the act of a State was the "proximate cause" of the loss suffered.[27]

30. Throughout its review of category "C" claims, the Panel has found that the difficulty lies in making this determination of "direct" causation. At the same time, the Panel noted in the First Report that considerations of logic, fairness and equity must enter into this determination, bearing in mind the general mandate from the Governing Council in respect of urgent claims in that expedited procedures be adopted.[28] Thus, the Panel's development of a mass claims processing system for category "C" claims, in accordance with its mandate, has influenced the Panel to make certain general presumptions regarding Iraqi causation, where deemed appropriate, given the legal and factual circumstances of the particular loss type, as discussed more fully in section IV infra.

F. Evidentiary standard for category "C" claims

31. In accordance with decision 1 and article 35(c) of the Rules, evidence must be provided regarding the circumstances surrounding the claimant's loss to demonstrate that the loss was a direct consequence of Iraq's invasion and occupation of Kuwait. However, this evidence need only be the "reasonable minimum" that is "appropriate under the particular circumstances of the case" and a lesser quantum of evidence is required for claims for smaller amounts. Thus, in its First Report, the Panel took into account a number of factors including the different types of evidence submitted by claimants and background information concerning the availability, relevance and validity of such evidence in the context of the circumstances surrounding the invasion and occupation of Kuwait.[29]

32. In the First Report, the Panel determined that the completed claim form itself constitutes an essential statement by the claimant, that identification documents submitted as proof of identity not only establish identity reliably but also serve to establish the fact of the claimant's presence in Iraq or Kuwait prior to or during the invasion, or an eligible family relationship. The Panel found further that personal statements may in some instances be the best available evidence to indicate the circumstances of the loss, but that the evidentiary weight to be given to such statements should vary in relation to the particular loss for which the statement is submitted. The Panel noted that while witness statements may often be the only corroborative evidence that a claimant may produce, such statements may be analysed in the light of the relationship between

witness and claimant, along with consideration of general evidentiary principles relating to the quality and relevance of witness statements.

33. The Panel observed that a diverse array of other documentary evidence in support of losses had been submitted, including receipts and invoices, contracts, official government documents, birth, marriage or death certificates or similar documents prepared by an official entity, bank and real property records, letters from relevant professionals, including doctors, insurance loss adjusters, former employers, photographs and newspaper articles. The Panel considered such evidence to be probative of the losses claimed.

34. The Panel further took into account the circumstances in Kuwait and Iraq during the invasion and occupation, characteristics and circumstances of international claimants from varied socio-economic groups, the transactional practices in Iraq and Kuwait, the assistance provided to claimants by their respective national claims programmes and other background information. This information may provide secondary or circumstantial support for the claims and for the allegations contained in the claimant or witness statements.

35. The Panel took notice that the scarcity of evidentiary support where massive numbers of claims are involved is not a phenomenon without precedent in international claims programmes, particularly in abnormal circumstances such as those prevailing in Iraq and Kuwait during the conflict. In its final analysis, however, the Panel considered that the degree and type of evidentiary support required is determined very much by the loss elements claimed, as discussed more fully in section IV *infra*, taking into account the hundreds of thousands of claims to be resolved, the diversity of those claims and the claimant population, as well as the evidentiary considerations and questions of valuation involved.

G. Currency exchange rate

36. In its First Report, the Panel determined that the currency exchange rate to be applied for the purposes of processing and paying category "C" claims is determined in the following manner.[30] For claims stated, in whole or in part, in Kuwaiti dinars, the currency exchange rate is the rate of exchange in effect on 1 August 1990 for converting Kuwaiti dinars into United States dollars. For claims stated, in whole or in part, in currencies other than the United States dollar or the Kuwaiti dinar, the currency exchange rate to be applied is the average rate in effect for the month of August 1990 for converting those currencies to United States dollars. Further, in respect of the currency exchange rate, the date that the loss occurred has been determined as a single fixed date for all category "C" claims. The date of the invasion, 2 August 1990, serves as that fixed date.

II. CATEGORY "C" CLAIMS PROCESSING

A. Mass claims processing

37. In its First Report, the Panel considered the magnitude of the task before it and concluded that with the large number of "urgent" claims to be reviewed in a relatively short period of time, the methods used to process them must necessarily depart from traditional approaches to claims adjustment or arbitration. Reflecting those considerations and the directives from the Governing Council that simple, expedited procedures be used to resolve claims within a reasonable period, the Panel also concluded that it was neither appropriate nor feasible then and would not be feasible in future instalments to review individually each element of loss for each category "C" claim. [31]

38. In its First Report, where appropriate, the Panel implemented methods, criteria and techniques that could expedite the processing of thousands of category "C" claims in subsequent claims instalments. Thus, the claims in the first instalment were viewed as a "sample" of other similarly-situated claims and were reviewed to formulate general criteria and conclusions, whether related to issues of causation, evidence, valuation or otherwise. By implementing statistical sampling and modelling techniques, the Panel aimed to adopt a balanced approach that would render practical and simple justice. At the same time, the Panel recognized the limitations of devising a mass-claims processing system based solely on the review of the 2,873 claims included in the first instalment. [32] Thus, the Panel foresaw that further development of the processing methods and criteria would be required for the resolution of all instalments of category "C" claims. [33]

39. As a result, the activities undertaken by the Panel and the secretariat since the first instalment of category "C" claims have focused on building a claims-processing system to apply the Panel's precedental determinations. The main components of this processing system include: the registration and organization of claims; the entry of claims data into a database; the verification of claims data; the development of an electronic processing system to apply processing criteria approved by the Panel; the reporting of awards; and the tracking of claims for audit purposes. [34] With the development of the claims database, additional information about the category "C" claims population became available which has allowed the Panel to reconfirm and, where appropriate, refine its evidentiary determinations and valuation methods. The Panel has benefited from the use of standard statistical methods against the background of relevant precedents when it has conducted sampling projects to investigate evidence across all claim submissions and has performed computer database analyses that have enabled the validation of the various processing methods. Statistical expertise and specialized computer facilities have enhanced the modelling approach adopted by the Panel.

40. Thus, from the second to sixth instalments, the Panel adopted a "fast-track" approach to claims resolution that allowed it to concentrate on addressing certain loss types that lent themselves easily to expedited processing These loss elements were those most frequently claimed: departure and relocation related losses; personal property losses; salary losses; bank account losses in Kuwait; and MPA related to being taken hostage or being forced to hide. While groups of claims posing various technical or jurisdictional issues were included in the sixth instalment, the more complex claims, containing losses relating to personal injury or death, real property and business, other jurisdictional or technical problems and multiple claim issues, have been left to this seventh, and final, instalment. This fast-track strategy has allowed the Panel to resolve all loss elements in approximately 346,000 category "C" claims in the two years since it was adopted and to complete the entire programme in a third.

41. As explained in the First Report, the Commission made a fundamental choice when it determined that computerized support would be necessary to process category "C" claims. [35] Essential processing functions that depend on the computerized organization of claims include the registration, tracking and grouping of claims, claims analysis, development of processing criteria, statistical modelling, selection of samples, extrapolation of sampling results, duplicate and cross-category claims checking, and the calculating and reporting of compensation. The database processing system has allowed for the electronic processing of all loss elements in category "C" claims.

B. Registration and organization of claims data

42. As described in the Second Report, given the large volume of category "C" claims submitted by the Governments of Kuwait and Egypt (approximately 166,000 and 92,500 claims, respectively), the secretariat provided claim numbers and data entry software to these Governments to allow the submission of their category "C" claims, not only on paper, but also in electronic format. Thus, once the electronic claims data received from Egypt and Kuwait had been loaded into the Commission's database, the secretariat's organizational tasks were primarily concerned with the approximately 165,000 remaining claims submitted to the Commission. These claims and their attachments required the organization of some seven million pages of paper, submitted by more than 70 Governments and international organizations.

43. After registering each claim electronically with a unique Commission-assigned tracking number and labelling claim forms and boxes with pertinent identifying information, the secretariat performed various preliminary reviews and verification of the claims, comparing original versions with the copies provided. While retaining the original forms, the secretariat forwarded the copies to a professional data entry firm for entry into

electronic format. The 165,000 claims included in the off-site registration process were integrated into the Commission's electronic database in March 1997.[36] Further, from July to December 1998, the secretariat entered another 2,895 category "C" claims into the database on-site.[37] These later claims primarily included late-filed submissions from Kuwait and Afghanistan that were approved by the Governing Council for late filing at its 19th session in December 1995 and 26th session in December 1997 respectively. Category "C" claims created from inter-category transfers, separated "multiple" claims, or claims otherwise not included in the earlier off-site data entry project were also entered on-site.

44. As the Panel noted in the First Report, many claims were submitted to the Commission in a poorly organized or incomplete state and entry of data into the claim forms reflected erroneous interpretations of the "C" claims category as a whole and of the category "C" claims form in particular.[38] These poorly organized and incomplete submissions, along with erroneous interpretations, have had consequences in terms of organization and electronic processing for the claims concerned. Moreover, after listing many of the complications and issues raised by large numbers of claims,[39] the Panel noted in the Second Report that for every problem that appears to affect large groups of claims, thousands of individual claims present unique complications. This instalment, more than any other, proves the point.

45. Because relevant information is absent or not clearly provided, or simply because the volume of claims corresponding to a particular type of loss does not permit individual examination, detailed distinctions regarding legal and factual issues are not always possible.[40] Given that a manual review of more than 420,000 highly diverse claims has not been a realistic option, the Panel's processing criteria and recommendations take account of similarly-situated sections of the claims population as a whole. This is in keeping with decision 1 and relevant precedents. Further, by compiling and comparing information about groups of claims, statistical sampling and modelling methods provide results that are efficient and, because they are based on presumptions of normalcy and on the reduction of individual bias, reasonable.

C. Electronic processing of category "C" claims

46. Since the second instalment, the Panel has reviewed groups of claims in a manner consistent with its "fast-track" approach in an effort (a) to refine the criteria for compensability of loss elements in accordance with the information received in respect of the numbers of claims and types of losses as identifiable in the database, (b) to render additional loss element types amenable to mass processing after sample reviews have been undertaken and analysed and (c) to isolate the most complex groups of claims. The composition of each subsequent instalment has therefore included claims with loss elements that could be resolved by the

methodologies developed for that instalment or with jurisdictional or technical problems that were addressed and ultimately resolved.

47. To assist with the Panel's processing of loss elements in a consistent fashion for all similarly-situated claimants, its decisions are either (a) converted into electronically implemented compensation methodologies that incorporate both eligibility criteria and valuation methodologies for the losses in question or (b) implemented by application of statistical models developed in accordance with standard statistical practice to claims that meet the threshold criteria for compensability for the loss element in question. Thus, an elaborate electronic processing cycle has been developed in which all tasks are tested, authorized, implemented and verified in a certain order and sequence for purposes of security and accountability.

48. Many of the loss elements processed in this seventh instalment required detailed claim-by-claim review as opposed to reviews of representative sample groups. Still, the preparation and processing of claims for this instalment have demonstrated that the mass claims processing approach is the only feasible manner in which equitable outcomes may be attained within a reasonable period of time, even for these former "non-fast-track" loss elements.

III. CLAIMS EVALUATION AND COMPENSATION METHODOLOGIES

A. Threshold issues common to category "C" claims in all instalments

1. Claimant identity and presence or residence in Iraq or Kuwait

49. The threshold issues considered by the Panel to be generally relevant for all category "C" claims are two: (a) whether the claimant's identity has been established; and (b) whether the claimant's presence or residence in Iraq or Kuwait on or prior to 2 August 1990 has been established. [41]

50. Based on its review of the first instalment, the Panel found that claimants had presented sufficient evidence in support of their identity. That evidence consisted of: (a) the identification evidence submitted by the claimants; (b) the affirmations on their claim forms stating that the information in the claim was correct; and (c) the affirmation provided by each submitting Government to the effect that the claimants were its nationals or residents. In addition, the secretariat performed preliminary reviews and assessments of the claims to determine whether the formal requirements had been met.

51. In respect of presence or residence in Iraq or Kuwait, the Panel noted that the vast majority of claimants had established the fact of their presence or residence in one of those countries by submitting passport or other identification documents with dates enabling the Panel to conclude

that they were indeed present during the relevant period.[42] The Panel further considered that the claim form itself provided certain basic information to verify the fact of the claimant's presence in Iraq or Kuwait, such as the claimant's address in one of the countries, the sponsor's name and address, bank name, account number, employer name and address. Of particular relevance are the Kuwaiti civil identification number[43] or Iraqi residency permit numbers.

2. Completion errors and correction efforts

52. As the Panel noted in its First Report and, once again, in its Second Report, a significant portion of category "C" claims have been completed in a poorly organized, improper and incomplete fashion.[44] This was due to a variety of factors, including the backgrounds of individual claimants, lack of instruction in completion of the form and misinterpretation of the claim form. The Panel's concern has been that, given the processing methodologies it has developed, such mistakes may have had a bearing on the claimants' entitlement to compensation and the extent thereof.

53. In addition to the measures taken by the secretariat to facilitate the complete and consistent capture of claims data that were described in the Second Report,[45] the secretariat has implemented extensive data amendment and improvement projects in the context of database-assisted identification and verification of claims presenting specific problems and the separation of complex claims for manual review. In addition to the quality control and verification precautions that have been taken for each of the previous electronic processing cycles, the processing cycle for the seventh instalment has also included a series of electronically implemented and programmatic amendment measures, each targeting a specifically identified aspect of the claims that might otherwise have prevented them from receiving the proper consideration for the loss elements concerned. Examples of typical errors and amendment measures taken as they apply to individual loss elements are described more fully in section IV *infra* and the Panel is satisfied that the secretariat's efforts have mitigated the adverse effects to the extent feasible, in the context of mass claims processing.

3. Multiple recovery and duplicate claims

(a) Intra-category duplicate claims

54. The Panel has consistently noted throughout the category "C" claims programme that the large number of category "C" claims, the large number of countries submitting such claims and the fact that the claims were submitted in several different consolidated submissions have created the potential for intra-category duplicate claims and multiple recovery by the same claimant for the same losses within category "C". Therefore, using a special program similar to that used in the processing of category "A"

claims, before reporting category "C" claims in an instalment, the secretariat has, *inter alia*, first performed a cross-check on a number of available identifiers in order to exclude intra-category multiple recovery as much as possible. [46]

55. Following the March 1997 consolidation of all category "C" claims into the electronic database, the secretariat utilized the intra-category matching programme to identify approximately 12,400 potential duplicate category "C" claims. Thus, in its Sixth Report, the Panel set out a selection policy to determine which claim of more than one category "C" claim submitted by the same claimant from the same submitting entity would be compensable. The basic premise of the selection policy was that the claim submitted later or latest in time would be considered the claimant's final description of the losses claimed and would be the version processed. Thereafter, any other claims submitted by that same claimant would receive no compensation. [47] Accordingly, rejected duplicate claims from the same submitting Government or international organization were reported in the sixth instalment for the first time, together with their corresponding processed claims. All remaining rejected duplicate category "C" claims are included in this seventh instalment.

56. As noted in the Sixth Report, there were exceptions to the duplicate selection policy. [48] The most significant was that of 283 duplicate claims submitted by different submitting Governments or international organizations. [49] Thus, in accordance with the Panel's direction, the secretariat sent notifications of duplicate claim submissions to the 32 Governments or international organizations concerned requesting guidance in this respect. [50] Failing such guidance, the Panel directed the secretariat to select which claims should proceed in the processing cycle and which should be rejected as duplicates.

57. The Panel took note of all responses in selecting which of the duplicate claims should be considered as "valid" claims (e.g., selected for processing) and which should be rejected. To the extent that only one response was received in respect of a given claimant, the Panel's selection of the valid claim was determined in accordance with that response. When responses were received from two or more Governments or organizations in respect of the same claimant, the selection of the valid claim was determined by the specificity of the response for that claimant. For example, a response naming an individual claimant and forwarding specific instructions from that claimant or one asserting direct or attempted communication to ascertain the wishes of a given claimant was generally considered to have more weight than a response making global assertions but indicating no attempt to contact specific claimants. Further, as between a submitting Government and an international organization, the secretariat considered the valid claim to be that submitted by the Government, unless an individual claimant specified through the organization that the organization should be considered the official submitter of his or her

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claim.[51] In this manner, all issues relating to duplicate claims submitted by different submitting entities have been resolved and the selected valid claims have been processed in this instalment in accordance with the Panel's criteria for the loss elements contained therein.

58. The Panel has also taken into account notifications that the secretariat has received from submitting Governments concerning duplicate claims that were not identified before being included in a report. In respect of such claims, the Panel has instructed the secretariat that the selection of the valid claim shall be determined as follows: (a) where duplicate claims have been reported in different instalments, the claim earlier reported shall be deemed to be the valid claim; and (b) where duplicate claims have been reported in the same instalment, the claim with (i) the higher lot number, or (ii) the higher claim number within the same lot shall be deemed to be the valid claim.[52] In either situation, the Panel has also instructed the secretariat that, should differences exist in total amounts awarded, the presumption should be that losses in the valid claim will be reconciled to the higher award. All corresponding duplicates should then be reported as rejected duplicates.

59. In a final effort to ensure that claimants have not been unfairly disadvantaged by the Panel's duplicate selection policy, the Panel has also instructed the secretariat to review all instances of duplicate claims where the valid claim was not awarded compensation in order to confirm that the rejected duplicate version contains no compensable loss elements. In cases where the rejected duplicate claim contains a compensable loss element, the Panel recommended that its corresponding valid claim be amended to include that element and that an award be calculated accordingly. Both this situation and that of the adjustment to awards when duplicates have already been reported will be the subject of article 41 corrections reports, following the completion of processing for all category "C" claims.

(b) Inter-category duplicate claims

(i) Duplicate recovery issues with category "A" claims

60. Decision 1 provides, in paragraph 11, that lump sum amounts of US$2,500 for individuals and US$5,000 for families will be provided for departure (category "A") claims where there is simple documentation of the fact and date of departure from Iraq or Kuwait. Decision 1 further provides, also in paragraph 11, that claims for such departure losses should not be resubmitted in other categories, but rather that claimants having losses greater than US$2,500 and that can be documented should submit those losses in other appropriate categories but not in category "A".

61. Decision 1 does not specify that claimants in category "A" may not submit claims for losses other than departure losses in other categories. However, the category "A" claim form included an option providing that a claimant could select higher lump-sum amounts (US$4,000 for an individual and US$8,000 for a family) providing that the claimant agreed not to submit claims under any other form or category. [53] However, in decision 21, the Governing Council provided that: (a) any claimant who has selected a higher amount under category "A" and who has also filed a category "B", "C" or "D" claim will be deemed to have selected the corresponding lower amount under category "A"; (b) those successful claimants whose category "A" individual claims are being so adjusted will receive an initial payment of US$2,500, but will not receive any additional payment under category "A"; and (c) those successful claimants whose category "A" family claims are being so adjusted will receive an initial payment of US$2,500, but will receive only an additional payment of US$2,500 under category "A".

62. For every instalment of category "C" claims, the secretariat has performed an electronic cross-check between categories "A" and "C", using a number of available identifiers, in order to exclude cross-category multiple recovery in categories "A" and "C". [54] Claimants who had submitted category "A" claims and who had also submitted claims for departure losses in category "C" had their recoveries manually adjusted for such in the first instalment. Claims of category "C" claimants with departure losses who matched category "A" claimants and that were identified during the first electronic processing cycle were removed from the processing cycle until the matches were confirmed. Following confirmation of the matches, the awards for departure losses in category "C" were reduced according to whether the claimants had submitted claims for individual or for family losses in category "A".

63. The adjusted award amounts in category "C" claims that were based on the cross-checks between categories "C" and "A" were reported for the first time in the Fourth Report. In all reports since the Fourth Report, in accordance with decision 21, category "C" claim awards have, where appropriate, reflected reductions for amounts already awarded in category "A".

(ii) Duplicate recovery issues with category "B" claims

64. The potential for multiple recovery between categories is also present in connection with claims for personal injury and death losses in categories "B" and "C". Decision 1 provides, in paragraph 12, that lump sum payments of US$2,500 will be provided for serious personal injury not resulting in death where there is simple documentation of the fact and date of the injury. It further provides, in the case of death, that a lump sum payment of US$2,500 will be provided where there is simple documentation of the death and family relationship. Also in the case of death, decision 1 provides, in paragraph 13, that a maximum lump sum amount of US$10,000 will

be paid for death in respect of any one family (consisting of any person and his or her spouse, children and parents).

65. Decision 1 further provides that if the actual loss in question was greater than US$2,500, payments in category "B" may be treated as interim relief. Decision 1 provides, in paragraph 12, that claims for additional amounts may be presented in category "C" and in other appropriate categories. Thus, claimants submitting claims for serious personal injury or for death in category "B" are specifically not precluded from submitting claims in category "C" even if they have received the maximum lump sum award amount in category "B". However, the Panel determined in its First Report that claimants who have claimed for the same costs or expenses in categories "B" and "C" should have any amounts paid under one category deducted from their compensation under the other.[55] Amounts awarded to claimants for serious personal injury or for death in category "B" and for which those claimants had the same category "C" losses were accordingly deducted from the category "C" claims in the first instalment.

66. Since the first instalment, no claims for serious personal injury or for death losses have been included among the claims reported. Therefore, until this seventh instalment, there have been no resulting deductions. In accordance with the Panel's decision in the first instalment, such deductions have been performed in this seventh instalment where, following cross-checks between categories "B" and "C", claims have been identified as claiming for expenses related to the same injury and death losses.

67. To conduct such cross-checks, electronic matching of personal injury claimants in categories "B" and "C" was performed. The electronic matching criteria developed for death losses were particularly complex because they required (a) matching of claimants to claimants, (b) matching of deceased persons to deceased persons and (c) matching of claimants to deceased persons. These cross-matching exercises have assisted both in preventing duplicate recovery for the same losses and in confirming results of claims for serious personal injury and death in category "C" in accordance with the results for the same losses in category "B". Additional issues concerning the cross-matching of claims in categories "B" and "C" are discussed in respect of the compensability of personal injury and death claims in section IV infra.

(iii) Duplicate recovery issues with category "D" claims

68. While decision 1 sets forth the criteria for expedited processing of urgent claims in categories "A", "B" and "C", decision 7 sets forth criteria for additional categories of claims.[56] The first of these additional categories is that of individuals not otherwise covered and whose losses exceed US$100,000 ("category 'D' claims").

69. The subject matter jurisdiction in category "D" is essentially the same as that for category "C". Decision 7 notes, at paragraph 7, that payments of compensation are available in respect of individuals who claim losses in excess of those compensable under claim forms "B" or "C" or who have chosen not to file under claim forms "A", "B" or "C" because their losses exceed US$100,000. Thus, the most obvious distinction between losses in categories "C" and "D" is that of the total amount claimed per individual claim.

70. A more substantive distinction deals with the requirement in category "D" that the evidence in support of the substantial amounts claimed in that category must be "documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss".[57] Additional distinctions include: (a) panels of Commissioners dealing, *inter alia*, with claims in excess of US$100,000 would be instructed to utilize different procedures appropriate to the character, amount and subject-matter of particular types of claims; (b) insofar as possible, claims with significant common legal or factual issues should be processed together; (c) unusually large or complex claims may be referred to panels for detailed review, possibly involving additional proceedings.[58]

71. While decision 1 provides that, for amounts in excess of US$100,000 per person, the first US$100,000 of losses should be presented in category "C" and the remainder separately, it does not specify that the mere fact of claiming for an amount in excess of US$100,000 is a jurisdictional bar to compensation if such a claim is presented in category "C". Thus, in its Sixth Report, after reviewing approximately 6,000 claims submitted in category "C" where the total losses claimed in each claim exceeded US$100,000, the Panel determined that where losses greater than US$100,000 were presented in category "C", only the first US$100,000 of such losses would receive expedited consideration.[59]

72. In reaching this determination, the Panel considered that the claims in question generally contained the most commonly requested category "C" losses: departure and relocation, MPA, personal property, motor vehicles, bank accounts, and salary losses. The Panel further noted the generally reducing effects of the fast-track methodologies used to resolve such losses in category "C" and the manual verification process for outlier amounts claimed and outlier amounts recommended which tended to reduce data error.[60]

73. The statistical regression models used in category "C" to resolve departure, relocation and personal property losses serve to recommend compensation not only as a function of the amounts claimed, but also according to the individual profiles of the claimants and the comparison of individual claimants to others in similar circumstances.[61] The criteria and formulas used to value MPA awards are based on Governing Council decisions 3 and 8. The formula used to value salary losses is based on a

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standard multiplier of seven applied to the prior monthly salary stated by the claimants. [62] As such, the methodologies operate to ensure that amounts awarded in claims requesting high amounts for fast-track losses are not significantly disproportionate to amounts awarded to others in category "C". Finally, in all circumstances and in accordance with the category limitation set by the Governing Council, global awards per individual claim are limited to a maximum recovery of US$100,000.

74. Still, even with the limitation to a total award amount of US$100,000 in category "C", the potential for duplicate recovery between categories "C" and "D" is of great concern for the Panel. To date, the secretariat has conducted manual cross-checks and verifications of loss amount data between the two categories during the routine processing of category "D" claim instalments and exchanged information between categories in an attempt to minimize the potential for duplicate recovery. With the comparatively recent incorporation of all category "D" claims into the electronic database, additional and more sophisticated electronic cross-checks will continue to be conducted between the categories. It is the understanding of the "C" Panel that adjustment according to the circumstances will occur in connection with the corresponding losses in the category "D" claim, whenever it is ascertained by the "D" Panel that amounts that have been awarded to an individual in category "C" correspond to loss amounts claimed in category "D" by that same individual.

(iv) Duplicate recovery issues with category "E" and category "F" claims

75. Decision 7 not only sets forth criteria for the processing of category "D" claims but also for claims of corporations and other entities ("category 'E' claims") and for claims of Governments and international organizations ("category 'F' claims"). [63] While the potential for duplicate recovery is more subtle and not as directly ascertainable between individuals in category "C" and the corporations, Governments or international organizations who may have compensated them for the same losses they claim in their individual capacities, the Panel notes that it certainly does exist.

76. This duplicate recovery potential has most relevance when the corporation, Government or international organization is also claiming for losses that are essentially the same but viewed from another perspective, e.g., amounts paid by these entities to reimburse individuals for costs related to departure, relocation, personal property, real property or employment losses, in addition to relief, injury and death benefits. Detailed identification from these entities in respect of their individual employees is crucial for cross-category verification to work.

77. In a continuum with similar concerns expressed in the First Report, [64] the Panel therefore urges that all attempts reasonably possible be made to

minimize the risks of double recovery in connection with categories "E" and "F", including the development of such cross-category matching programmes as are appropriate, the reporting of all loss element calculations and compensation recommendations for relevant claims in category "C" to the appropriate panels, providing copies of claims and attached documents submitted in category "C" to the appropriate panels and making available to the appropriate panels all relevant valuation materials used.

(c) Multiple recovery due to compensation from non-Fund sources

78. In decision 13, [65] the Governing Council provided at paragraph 3(b) that amounts paid to claimants as compensation from other sources be deducted from the compensation to be paid from the Fund to that claimant for the same loss. The Governing Council accordingly invited claimant Governments and the Government of Iraq to provide the Commission with information about such payments or awards of compensation. When such information has been received, the secretariat has forwarded it to the Panel for consideration and the Panel has recommended adjustment to the claims involved, which has been implemented by the secretariat.

79. In all of its considerations, the Panel has noted that the clear intent of decision 13 is to avoid multiple recovery of compensation by claimants for the same losses. To that effect, the category "C" claim form requests that claimants declare whether and how much compensation they may have received in connection with the losses that they claim. Following the first instalment, in which all 2,873 claims were manually reviewed, information on compensation received was duly recorded in the category "C" database for more than 9,100 category "C" claims.

80. In its review of first instalment claims, the Panel recommended adjustment of individual awards where such was deemed to be necessary. At that time, the Panel considered communications from Governments explaining that certain payments either (a) had been deducted from individual claims prior to their submission to the Commission, or (b) were to be recouped from the claimant where duplicative. In such situations, Governments also represented that they would not seek reimbursement for such amounts in corresponding claims submitted by them for their own losses. The Panel found these measures reassuring but stressed that each Government would be expected to adhere to the measures suggested to ensure that claimants would not receive compensation from the Fund as well as from other sources. [66]

81. In its Sixth Report, in respect of the 9,100 claims with recorded amounts of compensation received, the Panel noted that up to 30 per cent of such entries had been made in error. In one sampling project where claimants declared receipt of small amounts of compensation, up to 97 per cent of those amounts could not be categorized to a loss element claimed by the claimants. The Panel also considered that, in the majority of such cases, the compensation received was in the form of relief or general

dislocation assistance payments from the claimants' Governments. Its considerations reflected that those Governments had represented that they would not seek reimbursement for such amounts from the Commission.

82. The Panel further noted that the observed effect of the methodologies used to process fast-track losses in category "C" had most generally been to reduce compensation awarded to category "C" claimants. It concluded generally that reducing awards further by declared amounts of compensation received that may actually have been attributable to (a) data error, or (b) an amount received that had already been factored into the amount claimed before submitting the claim to the Commission, or (c) an amount received for a loss not even claimed for before the Commission, could result in a disproportionate reduction of an already reduced award. [67]

83. In its sixth instalment considerations, however, the Panel was dealing only with claims containing fast-track losses. Further, even among such fast-track claimant groups, the Panel provided for a specific exception. That exception, in note 107 of the Sixth Report, concerned claimants from OECD countries who asserted compensation received in amounts of US$9,000 or more. [68] All claims so identified were reviewed manually. If amounts had not already been discounted or otherwise adjusted to reflect the amount of compensation received, amounts claimed for the corresponding losses were reduced accordingly. In some cases, this resulted in claims having net claimed amounts of zero and the claimants concerned will, in essence, have their claims rejected. Therefore, claims of nationals from OECD countries, where evidence has been produced showing receipt of US$9,000 or more, are included in this seventh instalment. Before being submitted to the Panel's processing methodologies, the amounts claimed were adjusted to reflect receipt of compensation from non-Fund sources.

IV. EVALUATION METHODOLOGIES AND COMPENSATION CRITERIA

A. Loss type "C1": damages arising from departure, inability to leave or return, decision not to return, hostage-taking or other illegal detention

1. Damages arising from departure, inability to leave or return or decision not to return ("C1-Money losses")

84. Decision 1, at paragraphs 14 and 18, provides that compensation payments are available for losses due to departure from, inability to leave or a decision not to return to Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 as a direct result of Iraq's invasion and occupation of Kuwait. These departure and relocation losses, including costs incurred for transportation, food, lodging, relocation expenses and similar costs, may be claimed on the "C1" page of the claim form.

(a) Experience of the first instalment

85. C1-Money losses constitute approximately 49,182 losses within the population of 420,000 category "C" claims. The Panel considered 773 such losses in claims submitted by 13 countries in its first instalment. In its review, the Panel concluded that C1-Money losses were the most diverse claims before it in terms of the factual bases underlying the claims, the amounts claimed and the items upon which the claims were based.[69] It observed, to the extent that a pattern was discernible in the claims reviewed, that claimants from the same country appeared to claim for similar items and amounts, perhaps reflecting similar involvement of their Governments in the preparation of their claims, their similar socio-economic characteristics and the fact that nationality was a critical factor in defining the departure and relocation experiences of individuals who fled Iraq and Kuwait.

(i) Evidence submitted in support of C1-Money losses

86. The most common forms of evidence submitted by claimants in support of their losses included copies of passports with visa and other stamps dated during the relevant period, tickets stubs, boarding passes, receipts, credit card statements, vouchers, invoices for airline, bus or ship tickets, travel itineraries, copies of airline, bus or ship passenger manifests, government or international organization record, certificate or letter, including emergency or temporary or substitute travel documents or identification papers issued by official Government authorities outside Iraq or Kuwait, along with personal or witness statements explaining the circumstances, dates and routes of their departures. The level, quality and type of evidence submitted was dictated by several factors, enumerated more fully in the First Report.

(ii) Processing methodology

87. Taking into consideration the numerous claims for this type of loss, the diversity of the claims presented, and the specific mandate of the Panel from the Governing Council to process urgent claims on an expedited basis, the Panel adopted a processing methodology for C1-Money losses in the first instalment that has not differed essentially throughout its subsequent instalments. The methodology entailed: (a) the grouping of claims presenting similar legal and factual issues; (b) the individualized review of sample claims from the relevant groupings; (c) the analysis of statistical data regarding the claims, and specifically the evidentiary patterns and amounts claimed; (d) the extrapolation of its findings in respect of sample claims to the non-sampled claims; and (e) additional verification of individual claims only when necessary.

(iii) Findings of the Panel in the first instalment

88. In its First Report, the Panel determined that, in order for losses relating to an inability to leave or return to Iraq or Kuwait or a decision not to return ("relocation losses") to be considered directly related to the Iraqi invasion and occupation of Kuwait, claimants must have established the fact of their residence in Iraq or Kuwait prior to the invasion. For departure-related losses, claimants must have established the fact of their departure from Iraq or Kuwait during the period from 2 August 1990 to 2 March 1991. The Panel further determined that C1-Money losses may be considered compensable only to the extent that they were temporary or extraordinary in nature. [70]

(iv) Valuation of C1-Money losses

89. In respect of valuation of compensable losses, the Panel also concluded that, while claimants had incurred C1-Money costs for which they were eligible to receive compensation, it was unable to value the losses suffered by the majority of the claimants and thus determine the amount of compensation awardable, solely on the basis of the valuation evidence submitted. [71] It was principally for this reason that the Panel decided that an average amount, calculated on the basis of the amounts claimed for C1-Money losses by all claimants in the first instalment, would be used to value nearly all C1-Money losses. [72]

(b) Refinement of the processing and valuation methodology since the first instalment

(i) Development of a statistical model using a data set representative of all category "C" claimants with C1-Money losses

90. Once data became available in respect of the category "C" claims population as a whole, rather than the first instalment experience alone, the Panel was able to reconfirm, and where appropriate, refine its evidentiary determinations and valuation methods. Thus, in its second instalment, with developmental assistance from statistical experts and based on a data-set consisting of 7,343 representative claims with C1-Money losses and based on standard statistical practice, the Panel concluded that a standard linear regression model should be used for the valuation of all C1-Money losses. [73] Thus, since the second instalment, claimants have been awarded the lower of the amount claimed or the amount calculated by the model for their C1-Money losses.

(ii) Additional findings of the Panel in respect of the relevant time period for C1-Money losses

91. The C1-Money losses included in the first to fifth instalments included claims where the dates of departure were indicated as occurring during the period from 2 August 1990 to 2 March 1991 ("the jurisdictional period"). However, approximately 10,500 claims for C1-Money losses had dates of departure indicated as occurring either before or after the jurisdictional period. The claims did not therefore appear to meet the basic jurisdictional time period requirement for compensation of C1-Money losses. Still, decision 1 provides, at paragraph 18, that losses caused by an inability to leave or return to Iraq or Kuwait or a decision not to return ("relocation costs") are compensable if they resulted from circumstances that occurred during the jurisdictional period and that were directly related to the invasion and occupation of Kuwait by Iraq. Therefore, sample reviews of claims with such C1-Money losses were conducted for large submissions, while all claims from smaller submissions were reviewed manually in order to determine whether these claims could be considered compensable.

92. The reviews confirmed that data entry error was not a factor in the entry of the dates. However, it was observed that while many claimants had indeed established their residence in Iraq or Kuwait prior to the invasion, they had departed from Iraq or Kuwait prior to the invasion, during the traditional summer vacation months of June and July 1990, and were most directly prevented from returning in August 1990 by the invasion and occupation. It was further observed that departures for claimants who departed after 2 March 1991 were not directly related to the invasion and occupation but rather to intervening circumstances, which did not rise to the level of the "special circumstances" required. [74] Given the results of the claim reviews, the Panel determined in the sixth instalment that (a) claims for C1-Money relocation costs could be compensable even when the claimants departed from Iraq or Kuwait prior to the invasion period, but, in no event earlier than 1 June 1990, so long as the claims contained either a Kuwaiti civil identification or an Iraqi residency permit number in the relevant field and (b) that no claims for C1-Money relocation costs without a Kuwaiti civil identification number or Iraqi residency permit and no claims for C1-Money departure costs were eligible for compensation when the dates of departure occurred after the jurisdictional period. [75]

(c) Recommendations for claims for C1-Money losses in the seventh instalment

93. This seventh instalment includes 16,239 claims that contain C1-Money losses. Of that number, 14,346 losses have been recommended for compensation and 1,893 have not been recommended for compensation. Throughout the category "C" claims programme, of a total number of 49,182

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claims containing C1-Money losses, 40,779 claims have been recommended for compensation and 8,403 claims have not been recommended for compensation.

2. "C1-MPA" losses: claims for mental pain and anguish arising from hostage-taking, illegal detention or being forced to hide

94. Decisions 1, 3 and 8 together provide that a claimant may be compensated for MPA resulting from being taken hostage or illegally detained for more than three days, for a period of three days or less in circumstances indicating an imminent threat to the claimant's life, and for being forced to hide on account of a manifestly well-founded fear for his or her life, or of being taken hostage or illegally detained. Claims for MPA arising from such circumstances may be submitted on page "C1" of the category "C" claim form and are referred to as C1-MPA losses accordingly. The Panel's legal, factual and processing considerations, as well as the substantive criteria applied in respect of C1-MPA losses, were first enumerated in its First Report.[76]

95. Taken together, compensation for C1-MPA losses has been requested in approximately 139,706 category "C" claims within the population of 420,000. In its first instalment, the Panel considered a total of 595 such losses submitted by 11 countries. Taking into account the relatively small number of claims in that instalment, the Panel adopted a methodology involving the individual review of claims and of the attached documentation. In subsequent instalments, the Panel reviewed large numbers of claims on a sample basis, in accordance with criteria developed in the first instalment, as well as in accordance with certain characteristics exhibited by the claims and the claimant groups. The Panel's findings and conclusions, along with the results of the methodologies applied are summarized below.

(a) Claims for C1-MPA losses for hostage-taking or illegal detention for three days or less

(i) Findings of the Panel in the first instalment

96. In order to be compensated for being taken hostage for three days or less, claimants must establish that they were held hostage or illegally detained, and, in accordance with decision 3, that they were held in "circumstances indicating an imminent threat" to their lives. In its First Report, the Panel identified certain categories of claimants where circumstances indicating an imminent threat to the claimant's life may be presumed to be present. The Panel also indicated that the identified categories were not exclusive. The listed categories included: (a) claimants who were detained and used in Iraq's "human shield" programme; (b) claimants who indicated that they or a family member are a national of a country specified in relevant directives or orders issued by the Iraqi Revolutionary Command Council, or known to have been targets of actions by

officials, employees or agents of the Government of Iraq or its controlled entities; (c) claimants who were held hostage or detained at a location where detainees were tortured or where executions were carried out; and (d) claimants indicating that they, or a family member are a member of, or were connected to, the Kuwaiti royal family, armed forces, government, resistance movement, or police force, or that they were, or a family member was, a political figure or a high ranking official in the Kuwaiti Government, prior to or during the invasion and occupation of Kuwait, as the case may be.[77]

(ii) Findings of the Panel since the first instalment

97. Apart from the eight C1-MPA claims for hostage-taking or illegal detention for three days or less that were included in the first instalment, there were approximately 3,300 others identified as such in the database. In view of the comparatively small number of claims containing this loss type and the specific findings necessary, the Panel determined that claims from small submissions should be manually reviewed, with sampling to be conducted only where appropriate for larger submissions.

98. The manual review first determined that the overwhelming majority of such claims (84 per cent) had been erroneously categorized and should rather have been claims for forced hiding. The claims were reclassified accordingly. In some cases, the number of days was also amended to more than three, where circumstances clearly warranted such. Of the remaining C1-MPA claims for illegal detention for three days or less, most met the criteria for compensability enumerated in the First Report. Following the manual review, 263 claims in the sixth instalment were recommended to receive lump sum amounts of US$1,500 as C1-MPA compensation for hostage-taking or illegal detention for three days or less. However, 142 of the claims reviewed did not meet the Panel's criteria and were thus not recommended for compensation for this loss type.[78]

(iii) Recommendations for claims for C1-MPA for hostage-taking or illegal detention for three days or less included in the seventh instalment

99. This seventh instalment includes 338 claims for C1-MPA for hostage-taking or illegal detention for three days or less. The Panel recommends compensation of lump sum amounts of US$1,500 for 272 claims. It recommends no compensation for this loss element in 66 claims. In total, the Panel considered and resolved 1,352 claims for C1-MPA for hostage-taking or illegal detention for three days or less.

(b) Claims for C1-MPA for hostage-taking or illegal detention for more than three days

(i) Findings of the Panel in the first instalment

100. In order to receive compensation for C1-MPA for hostage-taking or illegal detention for more than three days, the Panel determined in its First Report that claimants must establish the fact of being held hostage or illegally detained and the number of days they were so held. [79] The Panel held that claimants may be considered to have established the fact of being held hostage or illegally detained if (a) information from a Government confirms that a claimant was held hostage or illegally detained, or (b) the claimant has alleged specific circumstances or events relevant to his detention or hostage-taking, or (c) sufficient information is available from the claim form, the attached documentation, submissions by Governments, or relevant external information to enable the Panel to ascertain the location from which the claimant was taken hostage or illegally detained, the date the claimant was taken hostage or illegally detained, the specific identity of the claimant's captors, or the date the claimant was released from captivity. The Panel found further that it should be apparent from the available evidence that the claimant was confined to a particular location or locations within Iraq or Kuwait as a result of acts or actions by officials, employees or agents of the Government of Iraq and its controlled entities, involving some form of force or coercion, or the threat thereof. [80]

(ii) Processing methodology

101. The formula specified in decision 8 for compensating claimants found to have been held hostage or illegally detained for more than three days is based on the number of days the claimant was held captive. Taking all factors into consideration, in particular the inherent difficulty of proving the actual number of days that the claimant may have been held captive, the Panel accepted the number of days asserted by the claimant in the claim form, to the extent that number was not contradicted by other available information. [81]

(iii) Findings of the Panel since the first instalment

102. In its Second Report, the Panel determined that, on the basis of results derived from statistical sampling methodologies that confirmed the Panel's original first instalment findings in respect of C1-MPA losses, that nationals of OECD countries, who were known to have been specifically targeted for hostage-taking, and who had submitted claims for C1-MPA for hostage-taking or illegal detention for more than three days should be compensated for these losses in accordance with the decision 8 formula. [82] After additional sampling projects, the Panel concluded in the Fifth Report that Kuwaiti nationals, who represented a large, homogeneous group of

claimants and who shared particular evidentiary and other relevant characteristics, and who had submitted claims for C1-MPA for hostage-taking or illegal detention for more than three days should also be compensated for such losses in accordance with the decision 8 formula. [83] The Panel concluded in its Sixth Report that claims submitted by Kuwait on behalf of other nationals and all claims submitted by Somali and Ethiopian nationals, who demonstrated the same evidentiary characteristics for this loss type as did Kuwaiti nationals, would also be compensated in accordance with the decision 8 formula, using the number of days stated by the claimants. [84]

103. In respect of approximately 4,400 other claims for C1-MPA for hostage-taking or illegal detention for more than three days that were submitted by claimants from countries other than Kuwait and OECD countries, the Panel determined, also in the Sixth Report, that results of sampling reviews had identified certain claimant groups as not being eligible for compensation for this loss type at all. [85] In respect of all other groups, the results were inconclusive and did not allow for general determinations either as to the fact of hostage-taking or illegal detention or as to the sufficiency of the evidence submitted in support of the claims. [86] However, bearing in mind the humanitarian considerations inherent in processing individual claims in category "C" and the specific provision in article 36(b) of the Rules for reliance on sampling techniques, the Panel determined in its sixth instalment that compensation for these C1-MPA losses should be awarded to those nationals of non-OECD countries for C1-MPA for hostage-taking or illegal detention when the date of departure did not occur after 2 March 1991. In view of the inconclusive sample results, the Panel determined that the number of days asserted by such claimants should be reduced by a weighted average percentage. [87] Using the reduced number of days, compensation for this loss type for this group of claimants has thereafter been calculated in accordance with the formula provided in decision 8.

(iv) Recommendations for claims for C1-MPA for hostage-taking or illegal detention for more than three days in the seventh instalment

104. In this seventh instalment, there are 2,967 claims that request compensation for C1-MPA for hostage-taking or illegal detention for more than three days and that represent all claimant groups submitting such losses. For 2,666 claims, compensation has been recommended, while for 66 others, no compensation has been recommended. Of a total of 9,986 claims submitted throughout the category "C" claims programme for this loss type, 9,278 claims have been recommended to receive compensation.

(c) Claims for C1-MPA for forced hiding

(i) Findings of the Panel in the first instalment

105. In order for persons claiming for C1-MPA for forced hiding to receive compensation, decision 3 provides that they must prove that they were forced to hide on account of "a manifestly well-founded fear for their lives or of being taken hostage or illegally detained". In its First Report, the Panel identified certain categories of persons who could be considered to have been forced to hide on account of the "manifestly well-founded fear" specified by decision 3. The Panel further determined that claimants falling within any of the categories specified in eight "forced hiding conditions" or demonstrating any of the characteristics so identified in their claim forms or attached documentation may be considered to have established that they were forced to hide on account of a manifestly well-founded fear for their lives or of being taken hostage. [88]

(ii) Findings of the Panel since the first instalment

106. In its Second Report, following sample reviews that confirmed its conclusions from the first instalment, the Panel determined that claims for C1-MPA for forced hiding that were submitted by Kuwaiti nationals and by nationals of OECD countries were compensable. [89] Compensation was to be based on the number of days stated on the claim form, to be calculated by application of the formula set out in decision 8.

107. The Panel addressed the issue of compensation for the nearly 10,000 claims for C1-MPA for forced hiding by nationals from countries other than Kuwait and OECD countries in its sixth instalment. After using, where appropriate, the same sampling methodology used to review the claims of nationals from Kuwait and OECD countries, [90] the Panel determined that circumstances in those claims for C1-MPA for forced hiding by nationals of other countries that were submitted by Kuwait and claims for nationals of Somalia and Ethiopia generally were similar to those of the groups of claimants sampled for C1-MPA for hostage-taking or illegal detention for more than three days. [91] The Panel therefore determined that those claims were compensable in accordance with the number of days stated by the claimant on the claim form, to be calculated by application of the formula set out in decision 8.

108. In respect of nationals from other non-OECD submitting countries, however, the Panel reached the same conclusion that it had with claims for C1-MPA for hostage-taking and illegal detention for more than three days. In its Sixth Report, the Panel determined that the results of the reviews were inconclusive and would thus not justify the formulation of general presumptions regarding either the fact of being forced to hide or the sufficiency or adequacy of the evidence submitted in support of claims for C1-MPA for forced hiding. Again, bearing in mind the humanitarian

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considerations inherent in processing individual claims in category "C", in particular, that nationals from countries other than Kuwait and OECD countries were generally among the claimant groups who were most adversely affected economically by Iraq's invasion and occupation of Kuwait, the Panel relied on the specific provision of article 37(b) of the Rules that provides for sampling of individual claims with further verification to occur only as circumstances warrant. [92] The Panel therefore determined that all C1-MPA claims for forced hiding were compensable so long as the number of days stated was greater than three. However, in view of the generally inconclusive results of reviews conducted for nationals of countries other than Kuwait or OECD countries, the Panel also opted to reduce the number of days stated by the claimant by application of a weighted average percentage. [93] Using the reduced number of days as a basis, [94] compensation has been calculated in accordance with the formula set out in decision 8.

109. The Panel further determined that those claimants of any nationality who left Iraq or Kuwait before the onset of the invasion or who were not able to establish that they were in either country during the invasion period should not receive compensation for C1-MPA for forced hiding. Also, a manual review of all claims for C1-MPA for forced hiding where the number of days stated was three or less was conducted to confirm that the number of days had not been entered in error. In such cases, considering that decision 3 provides that only those claims for C1-MPA for forced hiding for more than three days may be compensated, the Panel also determined that claims for C1-MPA for forced hiding for three days or less are not compensable. [95]

(iii) Recommendations for claims for C1-MPA for forced hiding in the seventh instalment

110. There are 10,446 claims that request compensation for C1-MPA for forced hiding in this seventh instalment and that represent all claimant groups submitting such losses. In 10,016 claims, compensation has been recommended, while in 430 others, no compensation has been recommended. Of a total of 128,368 claims submitted throughout the category "C" claims programme for this loss type, 127,095 have been recommended to receive compensation.

(d) Confusion between "mental pain and anguish" submitted as "serious personal injury" in category "B" with C1-MPA losses

111. In respect of some 351 claims that were transferred from category "B" to category "C" by the Executive Secretary after the "B" Panel noted that the claims were not actually for "serious personal injury" or death but rather for mental pain and anguish for being illegally detained, forced to hide or taken hostage, [96] the Panel determined in the first instalment and again, in the sixth instalment, that such losses should be recategorized to their respective C1-MPA equivalents and compensated as MPA rather than

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injury losses. Some were accordingly resolved as such in the first instalment. That resolution was approved by the Governing Council. [97] Therefore, once the Panel had resolved intra-category duplicate issues concerning certain transferred "B" claims in the sixth instalment, those claims were also recategorized to C1-MPA losses. All remaining transferred "B" losses have therefore been resolved in this seventh instalment, after having been recategorized as C1-MPA losses, most generally as C1-MPA for forced hiding for more than three days.

112. The issue of general confusion by claimants between injury and MPA losses, the precedent followed by the Panel in recategorizing losses submitted as injuries in category "B" to claims for C1-MPA losses and the Governing Council's approval of such, along with the Panel's findings in respect of all C1-MPA categories, also served as bases for several Panel decisions in respect of the resolution of certain groups of personal injury claims, as discussed more fully in paragraphs 138-140 infra.

B. Loss type "C2": damages arising from personal injury

113. Decision 1 of the Governing Council provides for the payment of up to US$100,000 in respect of "... personal injury ... or medical expenses ... as a result of Iraq's unlawful invasion and occupation of Kuwait". Using the "C2" page of the category "C" claim form, individuals have submitted claims for medical expenses incurred in connection with the claimant's personal injury, for MPA resulting from the serious personal injury of the claimant, or for witnessing the intentional infliction of events leading to the serious personal injury of the claimant's spouse, child or parent.

114. Claimants were requested to provide a brief summary of the cause and circumstances of the injury and a date of injury. Claimants selected among the appropriate injury categories: dismemberment; disfigurement; loss or limited use of body organs or systems; other injury requiring medical attention; sexual assault; torture and aggravated physical assault. Claimants were also requested to submit appropriate documentation such as photocopies of medical or insurance records to denote the nature and extent of the injury.

1. C2 claims for medical expenses ("C2-Money" claims)

(a) Experience of the first instalment

115. In its first instalment, the Panel considered 74 claims for personal injury, submitted by eight countries. During its deliberations and as an aid to its decisions, the Panel considered the extensive documentation available in United Nations-sponsored reports and in submissions made by and prepared on behalf of various Governments. [98] Further, the Panel relied on conclusions reached by the "B" Panel in respect of the relevant time period, claimant eligibility, and the location of the loss. [99] In respect

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of subject matter jurisdiction, however, the "B" Panel was specifically limited to lump sum compensation awards for "serious personal injury" [100] while decision 1 asserted that category "C" claimants could be compensated for medical expenses for other personal injuries requiring medical attention whether or not those injuries were considered serious personal injuries, so long as the expenses were documented. [101] Finally, the Panel relied on the information provided in the claims themselves, in particular, on the summaries provided by the claimants that explained the causes and the circumstances of their injuries. [102]

(i) Fact of injury

116. The Panel noted in its First Report that, as had happened earlier in category "B", most category "C" claimants faced evidentiary impediments in proving the fact of their injuries, having generally experienced circumstances that did not foster the procurement or retention of documentation that later could be used to substantiate their losses. Therefore, the Panel determined that a statement by the claimant, either provided on the claim form or as a separate document, constituted sufficient evidence of the fact of injury. The Panel further noted that a special standard should apply to C2 claimants who had established that they had been taken hostage or otherwise detained or in hiding (i.e., had valid claims for "C1-MPA" losses) and that the mere fact of completion of the C2 loss page alone in such cases could be viewed as sufficient proof of the fact of their injuries. [103]

(ii) Causal relationship to the Iraqi invasion and occupation

117. The principal causes of injury identified by the Panel included the following: [104] (a) military operations or actions; (b) torture, assault, maltreatment, oppression; (c) sexual assault; (d) lack of medical care; (e) accidents; (f) environmental health threats; and (g) the invasion and occupation in general. [105] The Panel considered that, consistent with the causation categories enumerated in decision 1, [106] and taking into account the data contained in the external reports, it was realistic to presume that injuries occurring during the period from 2 August 1990 to 2 March 1991 were likely to be attributable to Iraq's activities associated with the invasion and occupation of Kuwait. For certain types of injury, the Panel found that the presumption was not limited to the occupation period. Thus, even if injuries were incurred after the cessation of hostilities, injuries such as wounds caused by mine explosions, miscarriages, respiratory difficulties and mental problems could be attributable to Iraq. [107]

118. The Panel found further that, where the causal link with Iraq's actions was implied by the nature of the injury, such as gunshot or explosion wounds, there was no need for explicit evidence to that effect. In all other cases, the Panel determined that a statement by the claimant

mentioning or implying a causal link, whether provided on the claim form or separately, created a presumption that the injury was attributable to Iraq. This presumption, however, could be rebutted by information in the claim file. [108]

(b) Development of personal injury jurisprudence since the first instalment

119. Since the Panel's First Report in December 1994, the "B" Panel has concluded its deliberations, expressing its findings in four reports. [109] The "D" Panel has also issued a report in which its findings in respect of claims for personal injuries are discussed. [110] However, in view of the urgent nature of claims in both categories "B" and "C" and the expedited procedures applicable to category "C", the Panel considered, where feasible, that the jurisprudence of category "B" was more generally applicable to claims for personal injury losses in category "C".

120. Certain findings of the "B" Panel, adopted both prior to and after the first instalment of category "C" claims was approved, have therefore been considered in the development of jurisprudence and methodologies in respect of personal injuries in category "C". In addition to the general jurisdictional findings already noted in paragraphs 10-12 and 20 *supra*, these findings include, *inter alia*: (a) the recommendation that a person other than the claimant may exceptionally be eligible for compensation for a personal injury "when it is clear that other individuals, referred to in the documentation submitted, are claiming as well"; [111] (b) claims submitted both for the death of a relative and for the serious personal injury suffered by the deceased prior to death were not eligible for compensation as personal injury claims; [112] (c) for purposes of compensation, claims for miscarriage, abortion or stillbirth were erroneously filed as death claims and were considered rather as serious personal injuries to the mother; [113] (d) certain claims that were transferred to category "C" because the "B" Panel had found that the claims were for "mental pain and anguish" only have been recategorized as C1-MPA losses and not as personal injuries; [114] (e) "irrespective of the words used on the claim form" in cases where claimants presented evidence proving the existence of a mental injury and its direct causation by the Iraqi invasion of Kuwait, the injury would be considered as a post traumatic stress disorder ("PTSD") and hence, a serious personal injury; [115] (f) trauma caused by being illegally detained, taken hostage, or being forced to hide could result in ongoing and debilitating physical disorders, particularly when individuals were particularly susceptible to such; [116] psycho-organic stress-related illnesses such as the dysfunction of internal organs, severe gastro-intestinal illnesses with substantial weight loss, chronic headaches or painful skin rashes (e.g., eczema) requiring a course of medical treatment and arising in connection with a claimant's being in hiding, or having been detained or held as a hostage fell within the definition of "serious personal injury"; [117] (g) accidents involving Iraqi military vehicles were

considered to be direct consequences of the invasion and occupation; [118] (h) motor vehicle accidents occurring in the immediate aftermath of the invasion and immediately prior to the cessation of hostilities were a priori imputable to Iraqi authorities; [119] (i) heart attacks within six months of hostage-taking that were incurred by persons who had been held hostage could be considered to be directly related to the Iraqi invasion and occupation; [120] (j) a serious personal injury could be attributable to the lack of medical care, equipment or medicine only when it was "the consequence of an acute deterioration, or of a very severe exacerbation, of the health condition of a person and not just of an aggravation arising from the normal course and development of a preexisting illness or injury". [121]

(c) Findings of the Panel in the seventh instalment

(i) Determination of "serious personal injury"

121. In its consideration of personal injury losses for the seventh instalment, the Panel took note that difficulty in selecting the injury category upon which the claim was based was a phenomenon that was not limited to claimants in the first instalment. [122] In fact, it was observed that claimants from certain submitting entities, without submitting any evidence whatsoever, had consistently claimed for all C2 injury categories. The Panel once again noted the rationale underlying the correct classification of personal injuries: (a) only an injury corresponding to a serious personal injury as described in decision 3 is eligible for C2-MPA compensation; (b) ceiling amounts payable for C2-MPA depend on the nature of the injury suffered; (c) C2-MPA may be payable cumulatively; and (d) proper classification of an injury allows the application of evidentiary criteria that varies in accordance with the type of injury suffered. Accordingly, in its review of C2 personal injury losses, the Panel has recategorised injuries, where appropriate, based on information provided in the claim form and claim file.

a. Claims for C2 losses with corresponding category "B" claims for serious personal injury

122. The Panel's initial review of C2 personal injury losses concentrated first on those category "C" claimants who, after matching exercises had been implemented between the respective claims databases, were determined also to have submitted claims for serious personal injuries in category "B". Taking into account the "B" Panel's manual review of the individual circumstances of each loss, the extensive advice the "B" Panel received from medical and psychiatric experts in arriving at its conclusions, and the results of reviews in category "C" that had ascertained both that the underlying injuries were the same and that the preponderance of evidence in support of the losses had been submitted in category "B", the Panel determined, in instances of matching "B" and "C" claimants, that the "B"

Panel's determination would be considered dispositive of the outcome in category "C".

123. In such cases, the Panel concluded that, if the "B" Panel had approved the underlying injury, the C2 injury would automatically be presumed to be a "serious personal injury" for the same claimant in category "C". In cases where the "B" Panel had not considered that the injury was a "serious personal injury" in accordance with decision 3, the C2 loss would also be presumed not to be a "serious personal injury". This presumption could be rebutted by new evidence or facts not known to or considered by the "B" Panel that demonstrated that such a conclusion would be clearly erroneous in category "C". However, no such situations were discovered during the review of personal injury losses. Further, to the extent that the claimant had submitted documentation in support of medical expenses (C1-Money) for the injury, whether it was considered to be a "serious personal injury" or not, the claimant could be compensated. However, the Panel was quite concerned that, in all cases where compensation was awarded in category "B" for serious personal injury, any compensation calculated for C2-Money losses would be reduced by the amount awarded to the same claimant in category "B".

b. Claims for C2 losses without corresponding category "B" claims for serious personal injury

124. Due to the nature of C2 personal injury losses, the Panel had consistently considered them to be non-fast track losses requiring individual review. Thus, reviews of C2-Money and C2-MPA losses were generally conducted manually, particularly where an approved serious personal injury claim by the same claimant was not found in category "B". However, given that profiles of all category "C" claimants with C2 losses were now available in the database (2) and keeping in mind the urgent nature of claims in category "C", the provision in article 37(c) for the grouping and review of sample claims, and the results of the matching and comparison of category "B" claims with their corresponding C2 injuries, the Panel determined that certain groupings could be made in an attempt to facilitate the reviews of the approximately 7,427 claims for C2-Money and C2-MPA losses.

125. Such groupings occurred first in accordance with the jurisdictional time period. Claims with dates of injury indicated before 2 August 1990 or after 2 March 1991 were reviewed for error in entry of dates. The Panel determined that injuries stated as occurring prior to 2 August 1990 were not generally imputable to Iraqi causes unless claimants could allege and provide specific evidence of circumstances after 2 August 1990 that exacerbated an existing injury and that were caused by Iraq's invasion and occupation of Kuwait. Further, as had been observed in the results of the review of claims for C1-MPA for hostage-taking or illegal detention, injuries occurring after 2 March 1991 for certain claimant groups were

highly suspect because the events in those cases were most often not imputable to Iraq. However, for all claimant groups, certain exceptional circumstances after 2 March 1991 warranted recovery of compensation for injuries and compensation has been recommended accordingly.

126. In connection with claims for personal injury where no date of injury was provided, the Panel determined that a review of the claims should be conducted to ascertain whether dates had inadvertently been omitted from the claim forms. Failing inadvertent omission of dates that existed elsewhere in the claim file, the Panel determined that claims for C2 losses were not eligible for compensation (a) where no date of injury was provided and (b) where no description of the circumstances was provided. The Panel further determined that where no date of injury was provided but where there was a description of the circumstances that could lead to an inference of a causal link with the Iraqi invasion and occupation of Kuwait, the losses could be compensable.[124] However, depending on the nature of the circumstances described, the claims could properly be reclassifiable to C1-MPA losses where such did not already exist.[125] Further, the Panel made several general determinations in respect of the nature of the injuries claimed for and other reclassifications that should be made as described more fully below.

i. "Temporary" or "permanent" nature of the injury

127. The Panel determined that when the temporary or permanent nature of the injury was neither clearly specified by the claimant nor apparent from the explanation and evidence submitted in support of the claim, the injury would be considered to be temporary.

ii. "Torture" versus "aggravated physical assault"

128. In situations where the claimants had not clearly established a situation of being held hostage or illegally detained and had not otherwise provided specific details of the "torture" alleged, the injury would be reclassified to "aggravated physical assault".[126]

iii. "Sexual assault" versus "indecent assault"

129. In approximately 180 claims, claimants alleged that they had been sexually assaulted by Iraqis or their agents. All claims were manually reviewed for the individual circumstances. The Panel considered that the circumstances described by some claimants were more properly for the offense of "indecent assault".[127] While the Panel determined that such injuries should be reclassified to "other injury requiring medical attention" rather than to "sexual assault", it also concluded that they should continue to be considered as serious personal injuries for purposes of C2-MPA awards.[128]

iv. Medical expenses in connection with routine hospital stays in other countries

130. After considering the results of several claim reviews, the Panel approved in principle the payment of compensation for reasonable medical expenses in connection with routine hospital stays, e.g., for maternity stays or operations previously scheduled to take place in Kuwait or Iraq during the invasion period, so long as the expenses were incurred in other countries during the period of the invasion and occupation of Kuwait. The Panel considered that the expenses could be compensable to the extent that they would not otherwise have been incurred by the claimants because public health facilities in Iraq or Kuwait would have provided such services free of charge.

c. Valuation of C2-Money losses

131. Having implemented decisions generally applicable to the compensability of claims for C2-Money losses submitted by the population of C2 personal injury claimants, and considering the results of those decisions as applied in the review of all C2 claims, the Panel concluded that a manual verification and valuation of medical expenses was not feasible, considering the circumstances and nature of processing in category "C". The Panel therefore requested that the secretariat solicit advice from external consultants to propose a method for the calculation of amounts related to reasonable medical expenses that would be incurred, depending on the injury or injuries suffered by the claimants.[129]

132. After considerable research on compensation practice in respect of injuries throughout the Middle East, the consultants proposed, as a point of departure, that the C2-Money methodology be based on a "Dollar Compensation Unit" multiplied by a composite ratio derived from the type of injury, age group and nationality.[130] Based on more detailed reviews of the claims, the Panel determined that the nationality groups be composed generally of three groups: (a) Kuwaiti nationals; (b) nationals of OECD countries; and (c) all other nationalities. In its determination, the Panel took into account the claimant populations, their characteristics as represented in category "C" claims and existing Panel practice in consideration of analogous C1-MPA groups. The Panel also included gender as a factor in the composite ratio.[131]

133. Thus, the compensation methodology approved by the Panel and used to value claims that met criteria for C2-Money compensation was based on a lump sum amount of US$2,500 multiplied by a composite ratio based on: gender, submitting entity (i.e, Kuwait, OECD countries, or all other countries) and age.[132] The methodology was applied electronically to all C2-Money claims. Amounts calculated in this way were compared to the amounts claimed by claimants for C2-Money losses. Claimants were awarded the lower of the calculated figure or the claimed amount. Further, if

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claimants had already been awarded compensation in category "B", the C2-Money award was reduced by the amount of compensation awarded in category "B".

d. Recommendations for C2-Money claims in the seventh instalment

134. In accordance with decisions enumerated in this report, the Panel has considered approximately 3,000 claims for C2-Money losses in this seventh instalment. The Panel has recommended compensation in 2,203 claims and has not recommended compensation in 797 others. In all, the category "C" claims program has resolved a total of 3,074 claims for C2-Money losses, awarding compensation for 2,277 claims and none for 797 claims.

2. C2 claims for mental pain and anguish ("C2-MPA" claims)

(a) Findings of the Panel in the first instalment

135. Taken together, decisions 3 and 8 provide the categories of losses for which MPA compensation is awardable, along with ceiling amounts for the various categories. The Governing Council has set limits for the types of serious personal injury on the C2 loss page that are also eligible to receive such compensation. [133] However, C2-MPA may be awarded (a) for serious personal injury to the claimant or (b) for witnessing serious personal injury to a family member. Decision 8 further provides that compensation for MPA is payable cumulatively if the claimant has suffered multiple cases of injury, subject to an individual ceiling of US$30,000 and a family ceiling of US$60,000.

(i) Findings of the Panel in respect of C2-MPA for serious personal injury to the claimant

136. In the first instalment, the Panel determined that once the fact of injury had been proven, the presence of MPA could reasonably be assumed. [134] In order to assist in its determination of C2-MPA awards in the first instalment, the Panel relied on a report prepared by a panel of experts representing relevant disciplines such as psychiatry, psychology, and general, war and disaster medicine. [135] The MPA Report provides a number of relevant considerations, culminating in a list of differentiating criteria, known as "modifying factors" which allow MPA compensation to be adjusted in accordance with certain readily observable and objective standards that are intended to reflect different degrees of MPA suffered by claimants. Therefore, the Panel reached its recommendations for C2-MPA for injury to the claimant on the basis of the relevant modifying factors. The Panel noted, however, that implementation of certain recommendations in the MPA Report might be incompatible with the ceiling amounts established by the Governing Council. The Panel also recommended compensation of US$7,500 for cases of aggravated physical assault, in the absence of applicable

modifying factors entitling a claimant to the ceiling amount. Finally, it considered that modifying factors should be applied, where relevant, both to permanent and to temporary injuries, and that US$2,500 was an appropriate minimum lump-sum amount resulting from an injury of a temporary nature.[136]

(ii) Findings of the Panel in respect of C2-MPA for witnessing the intentional infliction of serious personal injury on a parent, child or spouse

137. In connection with this loss element, the Panel determined that claimants in the first instalment generally provided proof of an eligible family relationship and, to a limited extent, the circumstances of the witnessing claim. The Panel further determined that the requirement of intentionality could be inferred from the particulars of each case and the nature of the injury suffered, particularly injuries resulting from sexual assault, torture, and aggravated physical assault.[137]

(b) Findings of the Panel in respect of claims for C2-MPA included in the seventh instalment

138. In determining amounts to be awarded to claimants for C2-MPA losses, the Panel considered that eligibility for C2-MPA awards required the prerequisite finding of at least one serious personal injury as defined in decision 3. This eligibility threshold was presumptively met in the case of a corresponding approved claim for serious personal injury in category "B". The Panel further determined that claims for C2-MPA alone, without an underlying serious personal injury were not compensable. After studying the claimant MPA profiles as extracted from the database,[138] the Panel adapted the modifying factors used in the assessment of C2-MPA compensation to the requirements of mass claims processing by utilizing electronic indicators and descriptions provided by the claimants to determine incremental increases over base C2-MPA amounts of US$2,500.

139. One issue in connection with claims for witnessing injury that was noted during the extensive reviews conducted for these losses was that several claimants had erroneously claimed for witnessing their own injuries. The Panel has rejected all such claims. Further, when claimants requested compensation for witnessing injury to an eligible family member, but did not specify the injury witnessed in such fashion as the Panel could determine either what the injury was or whether it was a serious personal injury, the Panel did not recommend an award for C2-MPA for witnessing injury to a family member.

140. The Panel ascertained that, in many situations, claimants for C2 losses intended to claim only for MPA. Therefore, where C2 injuries did not meet the definition of serious personal injuries and there were no medical expenses claimed but where the claimant groups were particularly

vulnerable and could be presumed to have suffered due to Iraq's invasion and occupation of Kuwait, the Panel determined that if claims for C1-MPA for forced hiding did not already exist and there was no contradictory evidence in the claim forms,[139] the C2 claims could be reclassified to C1-MPA for forced hiding for four days. In this manner, some claimants were able to recover minimum lump sum amounts of US$1,550 as C1-MPA. However, the Panel did not recommend compensation for C2-MPA losses in any of these situations.

(c) Recommendations for claims for C2-MPA included in the seventh instalment

141. The 5,017 claims for C2-MPA that were not recategorised to C1-MPA losses are included in this seventh instalment. The Panel has recommended compensation in 2,557 cases for C2-MPA resulting from injury to the claimant and in 410 cases for C2-MPA resulting from the witnessing the intentional infliction of injury to a spouse, child or parent. In total, the Panel has considered and resolved 5,091 claims for C2-MPA.

C. Loss type "C3": damages arising from the death of the claimant's spouse, child or parent

142. In decision 1, the Governing Council provides for the payment of up to US$100,000 in respect of "... death ... or losses of income, support ... or medical expenses" as a result of Iraq's invasion and occupation of Kuwait. However, decision 1, paragraph 10, limits claims for death to those for the death of a spouse, child or parent. Using the "C3" page of the claim form, claimants may submit claims for medical, burial and other expenses and for the loss of support resulting from the death of their spouse, child or parent. Claimants may also submit claims for MPA for the death of a spouse, child or parent as a result of Iraq's invasion and occupation of Kuwait, either for witnessing the intentional infliction of events leading to that death, or resulting from the fact of death as such.

143. The "C3" page of the claim form requires that the claimant identify the deceased fully, indicate the claimant's relationship to the deceased, specify the circumstances of the death, provide the date of death and attach appropriate documentation in support of the fact of death and of the claimant's relationship to the deceased person. It further requests, inter alia, that the claimant indicate the amounts claimed for loss of support and for medical, burial and other expenses and whether the claimant is claiming for MPA for the fact of death or for witnessing the intentional infliction of events leading to that death.

1. Claims for C3 death losses for pecuniary amounts ("C3-Money" losses)

(a) Experience of the first instalment

144. In the first instalment, the Panel considered 14 claims for death losses, submitted by five countries. As with its deliberations in connection with claims for C2 personal injury losses, the Panel considered the extensive external documentation available concerning deaths during Iraq's invasion and occupation of Kuwait, solicited advice from medical and psychiatric experts, and relied on conclusions reached by the "B" Panel in respect of the subject matter jurisdiction, relevant time period, claimant eligibility and location of the loss. Finally, the Panel relied on the information provided in the claims themselves because the limited number of claims in the first instalment had enabled a more detailed review of evidence. At the same time, the Panel noted that (a) the extent to which the principles and procedures developed in the first instalment would need to be further developed would depend on the characteristics of future instalments of C3 death claims and (b) the criteria developed were intended to lend themselves to the processing of C3 death claims on a standardized basis. [140]

(i) Fact of death

145. The Panel noted that claimants for C3 death losses faced the same evidentiary impediments as had claimants for C2 personal injury losses. Still, it found that all claims in the first instalment were supported by death or burial certificates or by other documentation issued by an official authority confirming the fact of death. It concurred with the "B" Panel in regarding such evidence as sufficient proof of the fact of death. However, considering the conditions under which persons had died, the Panel expected future instalments to include a number of claims that would be accompanied by evidence of a lesser quality than that which characterized claims in the first instalment. In such cases, the Panel anticipated that appropriate evidentiary standards would need to be developed. [141]

(ii) Causal relationship to the Iraqi invasion and occupation

146. The principal causes of death identified by the Panel included the following: (a) military operations or actions; (b) execution, torture, assault, mistreatment, oppression; (c) lack of medical care; and (d) accidents. [142] The Panel concluded, however, that it was necessary to verify, in each individual case, the presence of a causal relationship with the invasion. As with claims for C2 personal injury losses, the Panel determined that the period between 2 August 1990 and 2 March 1991 was of primary importance in determining causation. Thus, consistent with the causation categories enumerated in decision 1, and taking into account the data contained in the external reports, [143] the Panel considered it realistic to presume that a substantial number of the deaths occurring in

Iraq or Kuwait during this period were likely to be attributable to Iraq's activities associated with the invasion and occupation. For certain instances of death, the Panel concluded that the presumption was not limited to the invasion period. Thus, even if they have occurred after the cessation of hostilities, deaths resulting from causes such as mine explosions may be attributable to Iraq. [144]

147. The Panel found further that, where the causal link with Iraq's actions was implied by the nature of the death, such as torture or execution, the Panel had no need for explicit evidence to that effect. In all other cases, the Panel determined that a statement by the claimant mentioning or implying such causal link, whether provided on the claim form or separately, created a presumption that the death could be attributable to Iraq. However, this presumption was rebuttable on the basis of information in the file. Therefore, the Panel considered the cause of death as stated in the medical certificate or as explained in other documentation to be most significant in this respect. [145]

(b) Development of death loss jurisprudence since the first instalment

148. Since the Panel's First Report in December 1994, the "B" Panel has concluded its deliberations and issued its findings in four reports. [146] The "D" Panel has also issued a report in which certain findings in respect of claims for deaths are discussed, along with a valuation methodology for D3 support losses. [147] As in its consideration of C2 personal injury claims, the Panel considered the jurisprudence of the "B" Panel, where feasible, to be more generally applicable to claims for C3 death losses.

149. Therefore, certain findings of the "B" Panel, adopted both prior to and following the first instalment of category "C" claims, have therefore been considered in the development of jurisprudence and methodologies in respect of C3 death losses. In addition to general jurisdictional findings already noted, these findings include, inter alia: (a) deaths from heart attacks occurring within a few days of witnessing events leading to the death of a spouse, child or parent may be considered to be related to the Iraqi invasion and occupation; [148] (b) deaths from heart attacks occurring within six months of being held hostage or illegally detained may be attributable to Iraq; [149] (c) deaths caused by those other than Iraqi authorities may not be recommended for payment of compensation from the Compensation Fund; [150] and (d) claims for death losses made by ineligible family members on behalf of a potential claimant who died before submitting a claim for such may not be compensated. [151]

(c) Findings of the Panel in the seventh instalment

(i) Determination of compensable claims for C3 death losses

150. In its first instalment review of 14 claims for C3 death losses, the Panel was able to evaluate the individual circumstances of each case accordingly. However, prior to the commencement of its review of the seventh instalment, the Panel took note that the database contained approximately 3,000 claims for C3 death losses. In an effort to expedite the verification of these losses, the Panel therefore adopted a review strategy that would (a) benefit from the manual review, expert advice received by and conclusions of the "B" Panel, and (b) extrapolate presumptions derived from the conclusions of the "B" Panel to the remaining "C" claimant population, insofar as possible.

a. Claims for C3 losses with corresponding category "B" claims for the death of a spouse, child or parent

151. Just as the Panel's initial review of C2 personal injury losses concentrated first on those category "C" claimants who, after matching exercises had been implemented between the respective claims databases, were found to have also submitted claims for serious personal injuries in category "B", the Panel adopted the same preliminary sorting methodology for claims for C3 death losses. Taking into account the "B" Panel's manual review of the individual circumstances of each loss, the extensive advice the "B" Panel had received from medical and psychiatric experts in arriving at its conclusions, and the results of preliminary reviews in category "C" that had ascertained both (a) that the deceased persons were the same, and (b) that the preponderance of evidence in support of the losses had been submitted in category "B", the Panel determined, in instances of matching "B" and "C" claimants, that the "B" Panel's determination would be considered dispositive of the outcome in category "C".

152. In such cases, the Panel concluded that, if the "B" Panel had approved a death claim for the same deceased person for one claimant, the C3 death loss would automatically be presumed to be eligible for compensation for the same claimant in category "C", less the amount awarded in category "B". Further, if the "B" Panel had approved that the circumstances of a given deceased person's death warranted compensation, the Panel determined that all eligible claimants in category "C" who had submitted claims for C3 death losses for the death of that same deceased person could receive compensation.

153. In cases where the "B" Panel had considered that the death was not compensable, any C3 death losses submitted on behalf of the same deceased person would also not be considered to be compensable. However, this presumption could be rebutted by new evidence or facts not known to or considered by the "B" Panel that demonstrated that such a conclusion would

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be clearly erroneous in category "C". However, no such situations were discovered during the review of death losses.

154. In all cases where the "B" Panel had recommended compensation to the same claimant for the death of the same deceased person, however, the Panel was quite concerned that any compensation calculated for C3-Money losses would be reduced by the amount awarded to the same claimant in category "B". Thus, the valuation methodologies discussed at paragraphs 159-171 infra, take that concern into account.

b. Claims for C3 losses without corresponding category "B" claims for the death of a spouse, child or parent

155. Because the Panel considered claims for C3 death losses to be non-fast-track claims, reviews of C3-Money and C3-MPA claims were generally conducted manually, particularly when there were no matching approved death claims found in category "B". However, given that profiles of all category "C" claimants with C3 losses were now available in the database [112] and keeping in mind the urgent nature of claims in category "C", the provision in article 37(c) for the grouping and review of sample claims, and the results of the matching and comparison of category "B" claims with their corresponding C3 death losses, the Panel determined that certain groupings could be made in an attempt to facilitate the reviews of claims for C3-Money and C3-MPA losses.

156. As with personal injury losses, the groupings for the review of death losses occurred first in accordance with the jurisdictional time period. Claims with dates of death indicated before 2 August 1990 or after 2 March 1991 were reviewed for error in entry of dates. The Panel determined that deaths occurring prior to 2 August 1990 were not imputable to Iraqi causes. Further, as had been observed in the results of reviews of claims for C1-MPA for hostage-taking or illegal detention and C2 personal injury losses occurring after 2 March 1991, deaths occurring after 2 March 1991 for certain claimant groups were highly suspect because the deaths were most often not imputable to Iraq. However, for all claimant groups, certain exceptional circumstances, such as mine explosions or consequences of illegal detention or torture during the invasion, that occurred after 2 March 1991 could warrant recovery of compensation for death losses. The Panel has recommended compensation accordingly in individual cases.

157. In connection with claims for C3 death losses where no date of death was provided, the Panel determined that review of the claims should be conducted to ascertain whether dates had inadvertently been omitted from the claim forms. The Panel determined that claims for C3 death losses were not eligible for compensation (a) where no date of death was provided and (b) where no description of the circumstances was provided. Thus, the claims generally determined by the Panel to be compensable as C3 death losses are those claims submitted by eligible claimants, that state a date

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of death and where the deceased person died (a) during the jurisdictional period of 2 August 1990 to 2 March 1991 and directly as a result of Iraq's invasion and occupation of Kuwait, or (b) after 2 March 1991, in specific circumstances, such as those resulting from mine explosions, that were directly attributable to the Iraqi invasion and occupation of Kuwait.

c. Erroneously submitted C3 death losses

158. During its review of claims for C3 death losses, the Panel determined that a number of claimants had erroneously submitted claims for C6 support losses as C3 death losses. This occurred in situations where the death had pre-dated the invasion but the payment of death benefits to the claimant in respect of the deceased was disrupted by Iraq's invasion and occupation of Kuwait. Similar situations occurred when claimants submitted claims on behalf of deceased persons whose dates of death followed Iraq's invasion and occupation of Kuwait but who had incurred salary losses during the invasion. [153] For both types of situations, the Panel determined that the claims were not compensable as C3 support losses, but could be compensable as lost support on the C6 page, should the claimants meet all other criteria for compensability. Therefore, the Panel determined, where appropriate, that such losses should be recategorized as C6 support losses ("C6-Support") and valued in accordance with the C6-Support methodology as described at paragraph 290 infra.

(ii) Valuation of compensation for C3-Money losses

159. Once having determined which claims for C3 death losses were compensable, the Panel turned its attention to the types of C3-Money losses for which valuation was necessary. The first loss concerned claims for C3 loss of support from a deceased spouse, child or parent ("C3-Support") and the second concerned claims for reimbursement of medical, burial and other expenses ("C3-Other"). [154]

a. Valuation of C3-Support losses

160. The methodology used by the Panel to value C3-Support losses in the first instalment is described in the First Report, at pages 125 and 126. That methodology reflected consideration of many actuarial and financial principles. However, considering that many of the claimants in category "C" also submitted claims in category "D", that the claims in both categories generally contain the same documentation in support of the C3 losses claimed, that the deliberations of the "D" Panel included recourse to actuarial expertise, and that consistency in valuation was desirable, the Panel chose to modify the methodology applied in its first instalment and adopt the approach and calculation methodology utilized by the "D" Panel for its valuation of D3-Support losses. [155] This methodology takes into account the personal circumstances pertaining both to the deceased persons and to the claimants, and is similar both in that respect and in

its reliance on a formulation of the present value of the income that the deceased person would have been expected to receive in the future, to the valuation methodology adopted by the Panel in its first instalment. However, the "D" Panel divided its population of deceased persons into two groups: (a) those who were gainfully employed prior to 2 August 1990 and for whom evidence of earnings for the twelve months prior to that date was provided; and (b) those who were not gainfully employed and to whom no income could therefore be attributed. [156]

i. Calculated C3-Support amounts

161. In respect of those deceased persons who had been gainfully employed prior to 2 August 1990 and for whom claimants had stated monthly earnings or for whom monthly earnings could be derived from annual earnings figures provided, [15] the "C" Panel considered the same actuarial principles as had the "D" Panel [158] and adopted the "D" Panel's calculation methodology. [159] The "D" Panel methodology divides claimants into three nationality groups and thus takes into account differences in the economic factors relevant in determining life expectancy tables to be applied in respect of the deceased person, as well as the discount rate for purposes of calculating the present value of the deceased person's future stream of income. [160]

162. Compensation is payable to the claimants in the form of a capital sum, actuarially equivalent to the presumed amount of financial support that the deceased person would have been expected to provide throughout his expected lifetime. The assumption is that the capital sum being available initially and invested to earn a compound interest rate (i) for (n) years would ensure payment of an annuity of 1 for (n) years. The capital sum is discounted to arrive at the present value of the annuity. Thus, the crucial factor in deciding the amount to be awarded is the discount rate to be applied. [161]

163. In its selection of discount rates to be applicable, the "D" Panel considered discount rates in the context of the economic conditions and financial market experience of the country of origin of the deceased person. Therefore, taking into account the economic conditions pertaining to the return on investment [162] and inflation [163] in the submitting countries as grouped by the actuaries, the "D" Panel selected discount rates as follows. Claimants from Group 1 should have a discount rate of five per cent per annum applied to determine the amount of compensation to be paid, while claimants from Groups 2 and 3 should have a discount rate of three per cent per annum applied. [164]

164. The "D" Panel considered further, in respect of the calculation of compensation for loss of support claims where the deceased was earning an income, the assumption that the yearly income of any individual is not used entirely to provide support to the family unit. Part of the income is used for personal consumption and for living expenses. Therefore, the "D" Panel

concluded that the loss of support suffered by the claimants should be assessed by deducting a certain percentage from the capital sum representing the deceased person's future income, reduced to its present value. The "D" Panel thereafter found the proposals made by the actuaries, that the percentage deduction should be 40 per cent where there is one dependent and 25 per cent, where there is more than one dependent to be reasonable and adopted them for purposes of determining the final amounts to be awarded to claimants. The expectation was that the total amount should be shared among all the eligible surviving dependents.[165]

165. The "C" Panel considered all of the proposals and recommendations adopted by the "D" Panel and adopted the same methodology for the valuation of C3-Support losses where the deceased was earning an income. Using the same series of calculations adopted by the "D" Panel for determining the amounts to be awarded, the "C" Panel developed a programmatic solution that was applied to all such claims for C3-Support that otherwise met the Panel's criteria for compensability. However, because several eligible claimants in category "C" have often claimed for the death of the same deceased person, the Panel determined that the total amount calculated for C3-Support losses should be apportioned equally among each eligible claimant who had submitted an individual claim in category "C" for support from the same deceased person. Given the nature of this mass claims programme, the Panel has determined that it would be impractical for the Panel to attempt to administer proportional compensation payments for support losses pursuant to the municipal laws of 93 claimant countries. Because all claims submitted in category "C" are also subject to the US$100,000 category limitation,[166] and because support losses are being claimed in category "D" in respect of the same deceased person, the Panel wished, insofar as possible, neither to disadvantage nor to preempt recovery for eligible persons in category "D".

166. To enable consideration of claimants in category "D" who may not have presented individual claims for support losses from a deceased person in category "C" in the apportionment of the total support amount, preliminary matching of claims in both category "C" and category "D" has taken place. Further, information relating to the deceased persons has been rendered consistent so as to mitigate issues of duplicate recovery between the two categories. The Panel reiterated that its specific intent was neither to disadvantage nor to preempt recovery for claimants in category "D" who may not have been discovered during these matching exercises and who may not have submitted individual claims in category "C". Therefore, the "C" Panel took official notice that, should additional eligible dependents be discovered only in category "D" who (a) are claiming for support from deceased persons for whom other claimants have submitted individual claims in category "C", and (b) may not have been considered in the apportionment of support amounts among all known eligible individual claimants in accordance with the "C" Panel's decision, adjustments may accordingly be made to awards of claimants in category "C" in accordance with the article

41 correction procedure. This caveat is noted so that eligible persons in category "D" [167] may not be disadvantaged for recovery of compensation for this loss by prior actions and decisions in category "C".

ii. Lump sum C3-Support amounts

167. For claims for C3-Support where the deceased persons had no prior income, the "C" Panel adopted generally the conclusions of the "D" Panel, inter alia: (a) the unpaid contribution of a wife and mother to the welfare of the family has a financial value which is recognized in both international and municipal law; [168] and (b) the family is an economic unit in which each member makes a contribution. Therefore, the "D Panel approved the payment of lump sum award amounts, with the amounts varying according to the relationship of the claimant to the deceased. In its first report, the "D" Panel provided a chart listing the lump sum amounts recommended. [169] Taking into consideration the "D" Panel's findings, the "C" Panel has also implemented this lump sum approach in cases where deceased persons for whom lost support was claimed were not presumably earning an income prior to 2 August 1990. The "C" Panel has approved the payment of the same lump sum award amounts to eligible claimants as did the "D" Panel. [170]

168. As was the case with the calculated C3-Support amount, because several eligible claimants in category "C" have claimed for the death of the same deceased person, the Panel determined that the total lump sum amount awardable in respect of each deceased person should be apportioned equally among each eligible claimant in category "C" who had submitted an individual claim for support from the same deceased to the Commission. Given the nature of this mass claims programme, the Panel has determined that it would be impractical for the Panel to attempt to administer proportional compensation payments for support losses pursuant to the municipal laws of 93 claimant countries. Once again, all awards are also subject to the category limitation of US$100,000.

169. The Panel notes once again that its specific intent was neither to disadvantage nor to preempt recovery for claimants in category "D" who may not have been discovered during inter-category matching exercises and who may not have submitted claims in category "C". Thus, the "C" Panel again took official notice that, should additional eligible dependents be discovered in category "D" who are claiming for support from deceased persons for whom other claimants have submitted individual claims in category "C", and (b) may not have been considered in the apportionment of support amounts among all known eligible individual claimants in accordance with the "C" Panel's decision, adjustments may accordingly be made to awards of claimants in category "C" in accordance with the article 41 correction procedure. This caveat is noted so that eligible persons in category "D" [171] may not be disadvantaged for recovery of compensation for this loss because of prior actions and decisions in category "C".

b. Valuation of C3 losses other than support ("C3-Other")

170. In its first instalment, the Panel considered only two claims for burial expenses and none for medical expenses. The Panel's recommendations therefore reflected its individual review of the evidence in such cases.[172] In view of the limited number of C3 claims for medical, burial or other expenses, or any combination thereof, the Panel determined that each claim should also be manually reviewed. In order for claims for C3-Other losses to be compensable, the claimants must have provided the date of death, proven the fact of death, demonstrated a causal link to the Iraqi invasion and occupation of Kuwait and provided evidence in support of the amount(s) claimed.

171. For claims meeting these threshold criteria, and considering the lump sum award amounts of US$2,500 awarded in category "B" for death claims, the Panel used the following rules to determine compensation for these losses. First, all C3-Other losses were reviewed manually. Where amounts claimed were in excess of US$2,500, the Panel awarded an initial amount of US$2,500, increased up to any amount greater than US$2,500 that could be proven by primary evidence such as bills or receipts. Where amounts claimed were in excess of US$2,500 and there was some evidence, such as a claimant statement or witness statement, but no primary evidence to support an amount higher than US$2,500 in support of pecuniary loss, the Panel awarded a lump sum amount of US$2,500. Where amounts claimed were less than US$2,500 and there was evidence of some pecuniary loss,[173] the Panel awarded the amount claimed by the claimant.

c. Deduction of amounts awarded in category "B" from C3-Money awards

172. The Panel noted further that any amounts awarded in category "C" for either C3-Support or C3-Other should be reduced by amounts awarded to the same claimant for the same deceased person in category "B". Deductions were made accordingly from the award in category "C" when such matches were found during the inter-category matching exercises between category "B" and category "C".

d. Recommendations for claims for C3-Money losses included in the seventh instalment

173. After recategorization to appropriate loss categories where appropriate, there are 2,203 claims for C3-Money losses included in this seventh instalment. The Panel has recommended compensation in 1,634 claims, 1,540 for C3-Support losses alone, 248 for C3-Other losses alone, and 154 for C3-Support and C3-Other losses (collectively C3-Money) in combination. In all, the Panel has resolved 2,216 claims for C3-Money losses.

2. Claims for C3 mental pain and anguish for death of a spouse, child or parent ("C3-MPA" losses)

(a) Experience of the first instalment

174. Decision 3 entitles claimants to compensation for MPA caused by the fact of the death of a spouse, child or parent or from witnessing the intentional infliction of events leading to the death of their spouse, child or parent. The Panel observed in the first instalment that, once the fact of death has been proven, the presence of MPA may reasonably be assumed. Thus, for all cases of compensable C3 death losses, claimants have also been awarded C3-MPA for the fact of death. As with C2-MPA awards, in considering the calculation of awards for C3-MPA losses, the Panel reached all recommendations in the first instalment after considering the modifying factors related to death as enumerated by the panel of experts [174] and the ceiling amounts for C3-MPA for fact of death in decision 8.

175. In respect of claims for C3-MPA for witnessing death, the Panel determined that deaths resulting from torture, execution and aggravated physical assault may be presumed to have been caused intentionally.

(b) Findings of the Panel in respect of claims for C3-MPA included in the seventh instalment

176. In determining amounts to be awarded to claimants for C3-MPA losses, the Panel considered that eligibility for C3-MPA compensation must be based on an approved claim for death. As with C2-MPA, this threshold was presumptively met in the case of a corresponding approved claim for death in category "E". The Panel determined further, that claims for C3-MPA alone, without an approved claim for death, were not compensable. For the seventh instalment, in addition to a manual review of claims for C3 death losses, the Panel studied data extracted from the database concerning certain claimant MPA profiles in connection with C3 death losses. [175] As a result of these extensive reviews, the Panel adapted the modifying factors utilized in the first instalment to the requirements of mass claims processing by utilizing the electronic indicators to determine incremental increases over base C3-MPA amounts of US$5,000. The Panel took into consideration whether there was also a claim for witnessing the intentional infliction of events leading to death. This fact may also have increased the base C3-MPA awards.

(c) Recommendations for claims for C3-MPA included in the seventh instalment

177. There are 2,781 claims for C3-MPA included in this seventh instalment. The Panel has recommended compensation in 2,338 claims for C3-MPA for the underlying death of a spouse, child or parent and in 97 cases for C3-MPA for witnessing the intentional infliction of events leading to the death of a spouse, child or parent. In total, the Panel has resolved 2,789 claims for C3-MPA.

D. Loss type "C4": damages arising from personal property losses

1. C4 damages arising from loss of clothing, personal effects, household furnishings and other personal property items ("C4-CPHO" losses)

178. Decision 1, paragraph 14, provides that compensation payments are available for losses of personal property arising directly from Iraq's unlawful invasion and occupation of Kuwait. On page "C4" of the claim form, claimants indicated whether they were claiming for losses of clothing, personal effects, household furnishings or other personal property items not included in the foregoing categories. Claimants were further instructed to attach appropriate documentary evidence establishing ownership of the property items and explaining the method of valuation used. Since the Second Report, personal property losses have generally been referred to as C4-CPHO losses.

(a) Experience of the first instalment

179. In considering claims for personal property losses in the first instalment, the Panel consulted several sources in respect of personal property ownership in Iraq and Kuwait.[176] The Panel noted that the main causes of personal property losses in Kuwait were the looting and vandalism of personal and real property by members of the Iraqi occupying forces. The Panel found that the main causes of personal property losses in Iraq were the inability of departing workers to transport many personal belongings with them and their continued inability to return to Iraq as a matter of choice or circumstance.[177]

180. The Panel noted that personal property losses were the most common type of loss for which claims were made in the first instalment. The Panel foresaw that such losses would continue to be the most frequently claimed.[178] Based on sample claims reviewed, personal property claims appeared to be very diverse in terms of the type and quality of evidence submitted, the manner in which the claims were prepared, the type and value of the items for compensation was requested and the total amounts claimed.

(i) Processing considerations and methodology

181. In its considerations, the Panel noted that article 37 of the Rules authorized the use of sampling to verify claims where the number of claims was large. While claims for personal property losses were diverse in every respect, they were still to be considered "urgent" claims, to be processed on an expedited basis. The Panel further noted that the number of personal property claims in the first instalment was relatively small in comparison to the total population of such claims to be reviewed in future instalments. Thus, the Panel stressed that the criteria set forth in the first instalment for verifying and compensating claims were applicable primarily to the claims in that instalment. Although the Panel made an effort to establish criteria that could be relevant to personal property claims in future instalments, it noted that the extent to which these criteria might require further development would depend on the characteristics of the claims in those instalments. [179]

182. The Panel specifically considered that, while an individualized review of each claim might have been warranted in the light of the diverse nature of the personal property claims, given the volume of claims, such a methodology, or any variation thereof, would likely require significant processing time, which would be contrary to the Governing Council's mandate that "urgent claims" be processed on an expedited basis. Accordingly, the Panel adopted a methodology for personal property claims entailing: (a) the grouping of claims presenting similar legal and factual issues; (b) the individualized review of sample claims from the relevant groupings; (c) the analysis of statistical data regarding the claims, and specifically the evidentiary patterns and amounts claimed; (d) the extrapolation of its findings in respect of sample claims to the non-sampled claims; and (e) additional verification of individual claims only when necessary. [180]

(ii) Relevant issues and criteria

183. To give effect to the Governing Council's guidelines and standards, the Panel reviewed the claims to verify that claimants had established (a) the fact of ownership of the personal property items they were claiming; (b) the fact of their loss and that it was causally related to Iraq's invasion and occupation of Kuwait; and (c) the value of their claim.

a. Fact of ownership

184. The Panel considered that generally the best form of evidence to prove ownership included receipts, bills, invoices and similar forms of primary documentation. However, only fifteen per cent of first instalment claimants provided such documentation. [181] Therefore, the Panel determined that in the absence of such primary proof, evidence in the form of itemized lists, personal statements and witness statements constituted the best evidence available as proof of ownership. The Panel found that such evidence constituted the "reasonable minimum" that was appropriate to establish the fact of ownership of the items claimed.

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b. Fact of loss and causal relation to invasion

185. Because the factual circumstances surrounding personal property losses were well-documented, the Panel determined that to the extent that an individual claimant had established that he or she was resident in Kuwait or Iraq at the time of the invasion, it was likely that (a) some form of personal property loss was suffered and (b) this loss was directly related to Iraq's invasion and occupation of Kuwait, either through looting or vandalism, clean-up operations, urgent departure for fear of personal safety, or inability or decision not to return to Iraq or Kuwait. In view of these and other relevant circumstances, the Panel concluded that personal property losses suffered by an individual, who had established that he or she was resident in Kuwait or Iraq at the time of the invasion, were directly related to Iraq's invasion and occupation of Kuwait.

c. Value of loss

186. The Panel noted that claimants generally submitted the same documentation in support of the value of their claims as they did to prove their ownership of the items claimed. Primary evidence such as receipts, invoices, bills and similar documentation constituted the best evidence in support of value. However, considering all circumstances, fewer than fifteen per cent of claimants in the first instalment were able to submit such documentation. At the same time, a very high percentage of claimants submitted itemized lists, personal statements and witness statements in support of the value of their personal property losses. However, claimants generally did not explain the method of valuation used, or used different valuation bases and methods for similar items. Amounts claimed for similar items often varied considerably.

187. On the basis of the evidence reviewed, the Panel was able to conclude that claimants had suffered significant personal property losses, measured in monetary terms. However, in view of the great diversity of the evidence submitted in support of valuation, and given that the nuances of individual claims could not be considered within the context of a mass claims processing methodology, the Panel was unable to value claimants' losses solely on the basis of the evidence submitted.

188. In the light of this lack of primary evidence, and to ensure consistency in the method used to compensate all claimants, the Panel decided to use a statistical model to estimate amounts that claimants might reasonably have been expected to claim based on (a) the amounts claimed by similarly situated claimants within the population and (b) certain individual characteristics of claimants relevant to predicting an individual claimant's property accumulation behaviour, and hence, property losses.[182] Using the model, amounts claimed by individual claimants were compared with amounts claimed by other claimants, taking into account their respective personal characteristics and property accumulation indicators.

189. The Panel was of the opinion that compensation awarded on the basis of the comparison of amounts claimed with those estimated by the statistical model was (a) reasonable, in that it reflected the patterns in the amounts claimed by all claimants in the population; (b) equitable, in that no claimant was awarded an amount higher than that to which the Panel had established that he was entitled; and (c) as tailored as possible, within the framework of a mass claims processing methodology, to reflect the individual circumstances and characteristics of the claimants. Still, the model used in the first instalment was not based on a representative sample of the entire category "C" claimant population, but only on a representative sample of claimants in the first instalment.

(b) Refinement of the processing and valuation methodology since the first instalment

(i) Development of a statistical model using a data set representative of all category "C" claimants with C4-CPHO losses

190. In its Second Report, the Panel reiterated its conclusions from the first instalment for claims for personal property losses ("C4-CPHO") and once again considered the application of statistical tools. Linear regression analysis provided a means for taking into account individual characteristics relevant to the determination of compensation awards. [183]

191. Therefore, to develop a valuation model representative of the entire claimant population, the Panel, in the second instalment, relied both on the advice of independent statistical experts, [184] and on the data contained in all category "C" claims submitted to the Commission. A statistical model for all C4-CPHO losses was developed from relevant data taken both from external sources and from the claim forms. This model was based on the largest possible representative sample, thus including 56,092 category "C" claims containing C4-CPHO losses. [185] In accordance with standard statistical practice, the base model was then tested on a replication sample of claims different than those used to build the base model. The tests confirmed the explanatory power of the base model. Moreover, comparisons of the compensation results for both groups revealed no significant differences in outcome. Finally, the results obtained from the modelling were analysed in the light of external data relating to wealth and property accumulation patterns of persons living in Iraq and Kuwait. This analysis generally confirmed the modelling results. [186]

192. To further validate the valuation results obtained by the model, the Panel verified, on a sample basis, the evidence submitted in support of C4-CPHO losses. In addition to confirming the immense diversity of the items claimed, the sampling results revealed patterns of evidence similar to those observed in the first instalment. While approximately 90 per cent of C4-CPHO claimants had submitted some form of evidence in support of their

claims in addition to the claim form, given all considerations and circumstances, the Panel concluded that the statistical regression model developed would be the best available option for valuing such claims within the context of a mass claims processing programme. Thus, the Panel determined that claims for C4-CPHO losses should be compensated at the lower of the amount claimed or the amount generated by the statistical model. [187]

(ii) Issues in respect of outlier claims

193. In selecting the statistical models to value loss elements in both C1-Money and C4-CPHO claims, the Panel expressed concern with two situations involving outlier issues: (a) claims with outlier amounts claimed; [188] and (b) claims with outlier amounts recommended. [189]

194. Claims containing outlier amounts claimed were excluded from the model building phases when developing the linear regression models used to value both C1-Money and C4-CPHO losses. However, once these claims had been reviewed for data error and amended if such was warranted, the model was applied to them. Thus, in such cases, the lower of the amount claimed or the amount calculated by the model was awarded to these claimants as well. Because the parameters of both models had been determined by using representative samples of the claims with these loss elements, all claims were treated alike on the basis of a common mathematical formula.

195. If, following the application of the models, awards resulted in outlier amounts recommended, the claims were not included in an instalment until they had been reviewed for error. Once reviewed, after any errors were corrected, the model was reapplied and the claims were reported in a subsequent instalment. Reviews of outlier amounts recommended that were in the second through fourth electronic processing cycles were not completed until the fifth instalment. [190] Others were included in the sixth instalment. [191] However, the majority of outlier claims are included in this seventh instalment.

196. Following the results reported in the fifth instalment, given the high expectations of some claimants and the comparatively low results awarded to them by the models, in particular the C4-CPHO model, some Governments raised concerns about whether the C4-CPHO model was defective or had been incorrectly applied. The Panel noted in its Sixth Report that neither was the case. Based on manual evidentiary review of outlier claims, sampling results and electronic surveys of the database, the C4-CPHO model had been demonstrated to be neither defective nor incorrectly applied, nor had its results been inequitable, unjustified or unfair under the circumstances. [192] Further, manual reviews had confirmed that amounts awarded by the models were fully as equitable as amounts supported by primary valuation evidence, when such was available. [193]

197. However, in consideration of the observed instances of general claimant confusion in entry of amounts into the proper loss fields and of the possibility that some disproportionate calculations by the model for outlier claims could be a result of this confusion, the Panel determined that it would revise its approach in respect of pending outlier claims. Once entries had been scrutinized for error, the Panel determined that, for any outlier claim where the recommended award amount was 35 per cent of the amount claimed, the total loss amount claimed for C1-Money or with C4-CPHO should be reallocated equally among all respective relevant loss sub-elements.[194] The Panel ultimately concluded that it should expand this decision for C4-CPHO losses to make the reallocation available to more claimants.[195] Thus, in this seventh instalment, all claimants with C4-CPHO losses who, after application of the statistical model, received recommended award amounts for these losses that were less than 50 per cent of the amount claimed, had amounts reallocated equally among the three loss sub-elements. The statistical model was then reapplied. Following the reapplication of the model, claimants were awarded the lower of the amount generated by the model or the amount claimed.

198. To the extent that any claimant may still have a disproportionately low outcome, it is because the model-generated award has taken the individual profile of that claimant into account and compared the amount claimed by that claimant with amounts claimed by similarly-situated claimants. Finally, in respect of claimants whose claims were reported in the second to sixth instalments and whose recommended awards for C4-CPHO losses were less than 50 per cent of the amount claimed for C4-CPHO, the Panel determined, in the interests of consistency, that those awards should be corrected in accordance with article 41 of the Rules. These corrections will be reported to the Governing Council following the completion of all processing activities in category "C".

(c) Recommendations for claims for C4-CPHO losses in the seventh instalment

199. The seventh instalment includes 43,305 claims that contain C4-CPHO losses. Of that number, 43,303 have been recommended for compensation in an amount of US$473,521,479. The category "C" claims programme has considered and resolved a total of 143,184 C4-CPHO losses.

2. Claims for C4 motor vehicle losses ("C4-MV")

(a) Findings of the Panel in the first instalment

200. In addition to claims for C4-CPHO, claims for motor vehicle-related ("C4-MV") losses may be submitted on the "C4" page of the claim form. Claims may be made for the total loss or theft of a vehicle, or for the cost of repairs due to damages caused by Iraq's invasion and occupation of Kuwait. As with C4-CPHO losses, claimants were requested to attach appropriate documentary evidence establishing ownership of the property

item and explain the method of valuation used. There are fields for entry of data specifying the make, model, and year of the motor vehicle or vehicles claimed for, as well as the registration or identification number. The Panel observed that most claimants typically provided the make, model and year of the motor vehicle and a significant number of claimants also provided the registration number or vehicle identification number. Most gave an estimate of the value of the vehicle at the time of the loss. However, fewer than fifty per cent indicated the method used to arrive at the value asserted.[196]

201. In the first instalment, the Panel considered a total of 509 C4-MV claims. Given the number of claims in the first instalment, the Panel's methodology entailed: (a) the classification of all motor vehicles according to make, model and year; (b) the individualized review of the evidence available in support of the claims; and (c) the valuation of claims found to be eligible for compensation according to a standardized motor vehicle valuation table created for such purposes. However, the Panel foresaw that this methodology might warrant modification in later instalments in order to facilitate the expedited processing of motor vehicle claims.

(i) Relevant issues and criteria

202. The Panel identified and considered three evidentiary issues relevant to the assessment and disposition of motor vehicle claims in the first instalment: (a) the fact of the claimant's ownership of the motor vehicle; (b) the fact of the claimant's loss; and (c) whether the claimant's loss was causally related to the Iraqi invasion and occupation of Kuwait. Once these criteria were met to establish compensability of the loss, the issue of valuation became relevant.

a. Fact of ownership

203. The Panel determined that claimants providing some form of official documentation such as car insurance records, car registration papers, drop-registration certificates, police reports, etc., could be considered to have proven the fact of ownership of the motor vehicle or vehicles to which the documentation pertains. However, the Panel also determined that a lesser degree of evidence might be sufficient in certain circumstances. Specifically, it held that non-Kuwaiti claimants may be deemed to have established the fact of ownership if they have submitted a claim form containing the make or model for each motor vehicle together with the registration number or vehicle identification number, along with the original cost or value of each motor vehicle.[197]

b. Fact of loss and causation

204. Considering all circumstances, in particular that claimants were not requested to explain how the loss occurred, the Panel adopted several presumptions for the determination of fact of loss and causation. It determined that, in the case of a claim for total loss or theft of a vehicle, the claimant's motor vehicle loss may be considered to be related to the invasion if the vehicle was left in Iraq or Kuwait. Where it is not indicated that the claimant used his or her vehicle to depart from either country, it may be presumed that the vehicle was left there. Claimants who indicated that they left Iraq or Kuwait in their own vehicles may have their losses considered to be causally linked to the invasion if the vehicles were left in a country known to have been a formal or informal point of departure from the region.[198]

205. The Panel determined further that claims for repair costs incurred in Kuwait or Iraq during the period 2 August 1990 to 31 August 1991 may be presumed to be causally related to Iraq's invasion and occupation of Kuwait. However, for repairs after 31 August 1991, the Panel determined that special circumstances must be observable from the claim form or attached documentation relating the costs incurred to events that took place during, or that arose out of, Iraq's invasion and occupation of Kuwait. Repair costs incurred by departing persons after 2 August 1990 for normal "wear and tear" incurred while en route to their final destination may also be considered to be causally related to the invasion.[199]

(ii) Valuation of C4-MV claims for total loss or theft

206. In view of the wide variation in the amounts claimed for similar automobiles or classes of automobiles, the inconsistency of the valuation-related information (make, model and year) provided by claimants, the lack of uniformity in the purchase prices indicated by claimants for similar automobiles, and the lack of consistency in the documentation submitted, the Panel determined that for automobiles that were destroyed, lost or stolen as a result of the Iraqi invasion, the amount of compensation awardable should be calculated on the basis of an estimation of the fair market value of the vehicle as of 1 August 1990.[200] For this estimation, the Panel relied upon a standardized table of motor vehicle values, the Motor Vehicle Valuation Table ("MVV Table"), prepared by the Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"), the Kuwaiti Government agency administering the Kuwaiti claims programme.[201] PAAC provided standard market values indexed by make, model and year for motor vehicles in Kuwait for the years 1980 to 1990, depreciated to reflect the current value of motor vehicles as of August 1990.

207. Thus, in the first instalment, the Panel determined that the amount of compensation to be awarded should be calculated on the basis of a comparison of the amounts claimed by claimants found to have established the fact of ownership with the value indicated for the underlying vehicle

/...

in the MVV Table. The award should in no event exceed the lesser of the amount claimed or the corresponding value for the motor vehicle in the MVV Table. [202]

208. The Panel valued claims for unique motor vehicles, such as boats, on a claim-by-claim basis or recategorized them as business losses on the "C8" page if the vehicle was a truck, crane or other heavy duty vehicle that appeared to have been used in the claimant's business.

(iii) Valuation of C4-MV claims for repairs

209. The Panel observed that claimants who submitted claims for C4-MV repair costs were more often able to present evidence in the form of receipts and invoices. Mindful of the Governing Council's guideline that a lesser degree of evidence may be sufficient for claims for lower amounts, and considering the patterns of evidence and of amounts claimed observable in the claims, the Panel adopted the following criteria for determining the amount of compensation payable for C4-MV repair costs:

(a) claims for repair costs up to US$500, whether incurred within or outside Kuwait, required only proof of the fact of ownership of the motor vehicle;

(b) claims for repair costs above US$500, but less than US$2,500, which were incurred within or outside Kuwait, had to be supported by at least a claimant statement itemizing the costs incurred, and explaining the factual circumstances giving rise to the claimant's losses; in the absence of the foregoing, the claimant was awarded an amount of US$500;

(c) claims for repair costs above US$2,500 which were incurred within or outside Kuwait had to be documented by receipts, invoices, bills of sale or other primary documentation; in cases where the amount claimed for repair costs was higher than the value of the motor vehicle according to the MVV Table, the Panel considered the loss to be a "total loss" and awarded the lesser of the amount claimed or the value of the vehicle according to the MVV Table. [203]

(b) Findings of the Panel since the first instalment

(i) Claims for C4-MV total loss or theft submitted by non-Kuwaiti claimants

210. Claims for C4-MV losses that were considered in the second instalment had been entered into the Commission's database. As part of the data entry process, the applicable motor vehicle values from the MVV table had been determined, where possible, and entered into the appropriate database fields for the corresponding claims. For the second instalment therefore, the Panel considered the rebuttable presumptions it applied in the first

instalment in respect of the fact of loss and its causal relationship to the Iraqi invasion and occupation. The Panel also considered its first instalment determination that non-Kuwaiti claimants were considered to have proven the fact of ownership of the underlying vehicle by providing (a) the make or model of the motor vehicle, (b) the registration or vehicle identification number, and (c) the original cost or value of the vehicle.

211. Each criterion is capable of being electronically ascertained. Therefore, since the second instalment the Panel has applied a programmatic solution to all claims for C4-MV losses that were submitted by non-Kuwaiti claimants and that satisfied the ownership criteria. The Panel determined the recommended amount of compensation by selecting the lowest of three amounts: (a) the amount of loss claimed for the motor vehicle on the "C4" page of the claim form; (b) the MVV Table value corresponding to the motor vehicle; or (c) the original cost or value of the vehicle as stated on the "C4" page of the claim form.[204]

(ii) Claims for C4-MV total loss or theft submitted by Kuwaiti claimants

212. As noted earlier, claims by Kuwaiti nationals were submitted to the Commission in both paper and electronic format. While the Panel had determined in the first instalment that the documentation submitted with these claims proved ownership of the underlying motor vehicles, no separate values had been entered into the corresponding MVV Table fields in the electronic claims. Therefore, claims by Kuwaiti nationals containing C4-MV losses were not included among claims in the second instalment. However, a sampling project was conducted following the second instalment to confirm that the amounts of loss claimed in these C4-MV claims conformed to the MVV Table values. The results of the sample confirmed that the amount of loss claimed on the electronic claim by Kuwaiti nationals was the equivalent of the MVV Table value. Thus, claims for C4-MV total loss or theft that were submitted by Kuwaiti nationals were reported for the first time in the fifth instalment.[205]

(iii) Elaboration of proof of ownership criteria

213. Approximately 14,000 C4-MV claims remained unresolvable by electronic means because they lacked some element of the electronically ascertainable proof of ownership criteria. Therefore the Panel directed that additional sampling exercises be undertaken to ascertain whether outright rejection of such claims or simple refinement of the ownership criteria was warranted. The sampling results showed that (a) outright rejection would not be a fair outcome for most claimants,[206] and (b) the majority of claims failed the proof of ownership test simply because there was no entry in the field "original cost or value". An electronic survey determined that 71 per cent of the losses surveyed had an entry in the field "amount claimed" and that the entry was the equivalent of the original cost or value.[207]

214. Considering the results of the electronic survey and the manual sampling exercise, the Panel determined that the proof of ownership criteria could be elaborated so that in the absence of an entry in the field "original cost or value", an entry in the field "amount of loss" would suffice as electronic proof of ownership. The Panel further determined that the refined proof of ownership criteria would be applicable both to claims for lost or stolen vehicles and to claims for repairs. Finally, the Panel determined that C4-MV claims that still did not meet the refined electronic proof of ownership were not compensable. [208]

(iv) Categorization of claims for lost or stolen vehicles versus claims for motor vehicle repairs

215. Another threshold difficulty for the resolution of approximately 15,000 C4-MV losses was that the type of loss was not indicated either on the paper claim or in its electronic equivalent. After inconclusive results from sampling projects, the Panel determined that a logistic regression model should be applied to the claims in question to predict whether the losses should be classified as (a) lost or stolen vehicles or (b) repairs to motor vehicles. As a result of this model, approximately 14,000 losses were deemed to be for lost or stolen vehicles and fewer than 1,000 losses were deemed to be for repairs. [209]

(v) Valuation of motor vehicles without MVV Table values

216. Up to the sixth instalment, certain C4-MV losses could not be processed electronically because they lacked an MVV Table value for comparison purposes. This could be explained, inter alia, by the following factors: (a) there was no entry of MVV Table value; (b) there was data entry error; (c) the vehicle was not present in the MVV Table; (d) the vehicle was an extraordinary vehicle, such as a truck or bus, etc.; (e) the vehicle was either a boat or a motorcycle; or (f) there was simply insufficient information in the claim file. [210] In the sixth instalment, therefore, the Panel decided on a sequence for the determination of values for C4-MV losses that did not have values. [211] With the exception of one group of C4-MV claims, [212] all MVV values were thus determined.

(vi) Methodology adopted by the Panel for the electronic resolution of claims for C4-MV repair costs

217. Also in the sixth instalment, the Panel modified its earlier valuation methodology for repairs to enable the electronic resolution of claims for C4-MV repair costs. In the light of the external valuation methods used successfully to resolve large numbers of C1-Money and C4-CPHO losses, the Panel adopted a linear regression model to assist with the valuation of recommended amounts for C4-MV repair losses with amounts claimed in excess of US$500. For each claimant, the amount generated by the model was compared to the amount claimed by the claimant and to the MVV

Table value for the corresponding vehicle. Providing that proof of ownership criteria were met, the lowest of the following three amounts was recommended for compensation:

(a) claims for C4-MV repair costs up to US$500 were compensated in the amount claimed;

(b) claims for C4-MV repair costs in excess of US$500 were compensated in accordance with:

- (i) application of the linear regression model developed to resolve C4-MV repairs;
- (ii) comparison of the result generated by the model with the amount claimed by the claimant and the objective MVV Table value of the corresponding vehicle;
- (iii) selection of the lowest amount of the three, provided that this amount was not less than US$500. In the event that the amount generated by the model was less than US$500, the claimant was awarded US$500. [213]

(vii) Methodology adopted by the Panel to resolve claims for C4-MV boats and motorcycles

a. Methodology applicable to claims for C4-MV boats and motorcycles that were submitted by Kuwait

218. The Panel considered that C4-MV claims for boats and motorcycles that were submitted by Kuwait on behalf of its nationals were uniformly well-documented for many of the same reasons that C4-MV claims by Kuwaitis were consistently well presented. Moreover, all Kuwaiti claimants in sampled claims met the proof of ownership criteria. The Panel considered the general C4-MV precautions and methodologies utilized by PAAC along with the efforts asserted by PAAC to ensure reasonable estimates of value for the "vehicles" claimed. [214] The Panel determined therefore that these estimates could be deemed to be probative of value. So long as claims for boats and motorcycles by Kuwaiti nationals met the proof of ownership criteria, the Panel determined that they would be compensated in an amount equal to the lower of the "amount claimed" or the "original cost" as stated on the "C4" page.

b. Methodology applicable to claims for C4-MV boats and motorcycles that were submitted by countries other than Kuwait

219. In contrast to the general conclusions applicable to Kuwaiti claimants, no general conclusion in respect of level and quality of documentation could be drawn in respect of the comparatively small number of claims submitted by non-Kuwaiti nationals for boat and motorcycle losses. The Panel considered a comparison exercise between claims for boats and motorcycles submitted by non-Kuwaitis and those submitted by Kuwaitis in order to determine whether values claimed could thereby be verified. However, after a manual review of the claims concerned, the Panel determined that such a comparison exercise was not feasible, in part due to wide disparities in description, particularly in respect of customization of boats. Further, the Panel considered that, even if such a comparison exercise could feasibly be undertaken, the great majority of claimants would still not have met the electronic proof of ownership criteria and would thus not be compensated in any event.

220. Taking note of this real inability of non-Kuwaiti claimants to recover compensation for boat and motorcycle losses in accordance with the C4-MV formula, the Panel considered that the claimants should recover at least some amounts for these items. Therefore, the Panel directed the secretariat to recategorize these C4-MV losses to C4-CPHO losses, thereafter to be reallocated, where warranted, in accordance with the C4-CPHO reallocation exercise adopted by the Panel. [215] In respect of these losses therefore, the secretariat has performed this recategorization and, where appropriate, has reallocated amounts among C4-CPHO loss sub-elements.

(c) Recommendations for claims for C4-MV losses in the seventh instalment

221. The seventh instalment includes 17,877 claims for C4-MV losses. Of that number, 15,515 have been recommended for compensation and 2,362 have not been recommended for compensation. Throughout the category "C" claims programme, of a total of 43,125 C4-MV losses, 39,687 have been recommended to receive compensation and 3,428 have not.

E. Loss type "C5": damages arising from losses from bank accounts, stocks and other securities

222. In the first instalment, the Panel considered a total of 389 claims for losses from bank accounts, stocks and securities: 376 claims for bank accounts in Kuwait; five claims for bank accounts in Iraq; and eight claims for stocks and other securities.

1. Claims for losses arising from bank accounts ("C5-BA")

223. Circumstances of bank account losses in Kuwait were well-documented and described in external sources. From 6 August 1990, most banks in Kuwait remained closed for the duration of the invasion: assets were frozen and branches had no access to records for information on the status of funds in Kuwait. While less information was available concerning banking operations in Iraq during the course of the invasion and occupation, Iraqi banks continued to operate within Iraq until immediately prior to the commencement of the Allied Coalition Forces offensive in January 1991. Their foreign branches, however, were made subject to the United Nations' embargo and asset freeze, which was imposed on 6 August 1990.

224. Following the withdrawal of Iraqi troops from Kuwait, banks operating in Kuwait resumed limited activities, effective as of 24 March 1991. Until 3 August 1991, restrictions on bank withdrawals were in effect. Following the lifting of the withdrawal restrictions, all holders of bank accounts were able to withdraw their funds freely. For foreign account holders who had not returned, the Government of Kuwait adopted measures, through the Central Bank of Kuwait, to make funds freely available to the beneficiaries of those accounts.

225. In contrast, Iraqi banks and their branch offices continue to be subject to the United Nations' sanctions and the economic embargo enacted pursuant to Security Council resolution 661 (1990), to national sanctions implemented by certain countries pursuant thereto, and to provisions of various Iraqi domestic laws. As such, access to accounts in Iraqi banks remains difficult, if not impossible, for persons no longer resident in Iraq. [216]

(a) Claims for losses arising from bank accounts in Kuwait

226. Considering the measures put into place by the Central Bank of Kuwait to provide claimants access to amounts on deposit with Kuwaiti banks and that claimants availing themselves of those procedures had been able to recover their deposits, the Panel determined in its first instalment that claims for such deposits were not compensable by the Commission. [217] It reaffirmed this conclusion in the second instalment. [218] In both instalments, the Panel instructed the secretariat to forward lists of such claimants, through the Government of Kuwait, to the Central Bank of Kuwait. Accordingly, that procedure has been followed for each instalment of category "C" claims. [219]

(b) Claims for losses arising from bank accounts in Iraq

(i) Findings of the Panel in the first instalment

227. In connection with bank account claims involving Iraqi banks, however, the Panel reviewed and resolved each claim on its own merits. Claimants generally asserted either that the Iraqi Government refused to permit the transfers of funds in their accounts in Iraqi banks or that the banks failed to respond to requests for withdrawals. In considering the five claims presented, the Panel found of particular relevance documentation submitted by the claimants in support of their losses, the specific factual circumstances underlying the claims, the limited availability of information regarding bank operations in Iraq after 2 August 1990 and general principles adopted in international banking practice. Therefore, in the first instalment, the Panel established no general criteria for this loss element [220]

(ii) Jurisprudence of the Commission since the first instalment

228. Since the first instalment, other Panels have considered various issues in connection with funds transferred through or deposited in bank accounts in Iraq. The Panel of Commissioners Concerning the Egyptian Workers' Claims ("the 'EWC' Panel") considered the non-transfer by Iraq of remittance amounts in connection with funds deposited into Iraqi bank accounts after 2 August 1990 by Egyptian workers for the purpose of transferring the United States dollar equivalent to banks in Egypt for the support of their families in Egypt. The "EWC" Panel found that, while the workers' salaries were deposited in Iraqi banks and the funds were still available for withdrawal at any time, the Iraqi banks were under an obligation to transfer the equivalent sums in United State dollars under an agreement entered into with banks in Egypt. [221]

229. On the other hand, the Panel of Commissioners reviewing "E2" Claims ("the E2 Panel"), in considering a claim for loss of use of financial assets held in deposit in Iraqi financial institutions, determined that the loss was not compensable. [222] The claimant had departed from Iraq as a result of the invasion and occupation. While the funds in the account were not expropriated, moved, stolen or destroyed, they were of no use to the claimant outside Iraq. The "E2" Panel distinguished its non-compensable claim from the compensable claims considered by the "EWC" Panel in that the funds in the "E2" claimant's account were non-transferable and non-exchangeable from the time the claimant opened the account. The account was intended to be used by the claimant to finance its activities in Iraq, while the claimants in the "EWC" claims had the underlying expectation of routinely having United States dollar amounts transferred to Egypt.

(iii) Findings of the Panel in the seventh instalment

230. Subsequent reviews of claims for C5-BA losses in Iraq continued the trend observed by the Panel in the first instalment. Claimants generally fell within the two situations represented in the "EWC" claims and the "E2" claim. The first situation included claimants who had an underlying expectation of having remittances transferred to their home countries. The second situation included claimants who deposited funds into their accounts in Iraq in the expectation of using those funds to finance their lifestyle and activities in Iraq.

a. Fact of ownership

231. Before making any decision regarding compensability in respect of C5-BA losses in Iraq, the Panel determined that basic criteria must be satisfied to demonstrate fact of ownership, fact of loss and causation. In order to demonstrate proof of ownership, claimants must have (a) entered their names as account holders; (b) provided the names of their banks in Iraq; (c) provided the account numbers; and (d) stated the dates on which they attempted to make their withdrawals or send their remittances. In order to determine whether claimants satisfied these basic criteria, electronic surveys of the database were implemented. In addition, manual reviews of sample claims were undertaken.

232. Of the approximately 2,800 category "C" claims containing this loss element, more than 1,800 were submitted by claimants from Egypt. Reviews of sample claims submitted by Egypt demonstrated that the overwhelming majority of claims for C5-BA losses in Iraq were created erroneously. Further, Egyptian claimants in the comparatively few valid claims presented evidence, not for bank accounts, but for non-transfer of remittance amounts, the subject matter of the "EWC" claim. The Panel was concerned that these claimants may already have been included within the "EWC" claim. Because it was not feasible to implement cross-checks between individual claimants in category "C" and those grouped within the "EWC" claim so as to categorically exclude the possibility of duplication, the Panel determined that claims for C5-BA losses in Iraq that were submitted by Egypt were not compensable.

233. All remaining claims were reviewed manually. To the extent that the relevant information could be ascertained from the claim form or the attached documentation, claimants were deemed to have proven the fact of ownership. However, many claimants for C5-BA losses in Iraq failed this threshold determination.

b. Fact of loss and causation

234. On the "C5" page of the claim form, in addition to information indicating proof of ownership, claimants were requested to indicate the type of bank account. The Panel determined that, when an account was designated as a "transfer" account, the designation presumptively indicated

the claimant's underlying expectation that funds would be remitted through that account to his or her home country. Conversely, the Panel determined that an account that was designated as a "deposit" account presumptively indicated a claimant's intention to use the funds for living or business expenses while in Iraq. However, most claimants did not indicate the type of account. Even when they did, confusion between deposit and transfer accounts was apparent. Therefore, assessments of whether the accounts were used to transfer funds were made at the time of review. Considering the reasoning of the "E2" Panel, the "C" Panel determined that "deposit" accounts were not compensable. Thus, only accounts designated as "transfer" accounts could be eligible to receive compensation.

235. However, the Panel also determined that two additional elements were necessary for a claim for C4-BA losses in Iraq to be considered compensable. First, the date of attempted withdrawal or transfer had to have occurred during the period of 2 August 1990 to 2 March 1991. Second, the claimant had to have a demonstrated pattern of transfer, either by belonging to a claimant group that routinely and regularly transferred small amounts to their home countries,[223] or by providing primary documentation in the claim file that indicated an entitlement to do so. If a claimant had successfully demonstrated this pattern of transfer, the Panel determined that non-transfer of the monies claimed for could be presumed to be causally related to the invasion and occupation.

236. In this regard, the Panel requested that the secretariat undertake research in respect of transfer rights of remittances. The secretariat concentrated on seven countries: Bangladesh, India, Jordan, Pakistan, the Philippines, Sri Lanka and Tunisia.[224] The research concluded that, while there were indeed patterns of transfer of remittances among these claimant populations, many such transfers may also have occurred informally and sporadically rather than formally and regularly. Moreover, reviews of claim files indicated that certain claimants employed in Iraq were entitled to have percentages of their monthly salary routinely transferred to their home countries. The Panel found it significant that, in a majority of such cases, claimants were not also claiming for salary losses on the "C6" page.

(iv) Valuation of compensable claims for C5-BA losses in Iraq

237. Considering all findings, noting that the number of claimants who met all criteria for compensation was relatively small and that the claimant groups most represented were among those who were most adversely affected by the invasion and occupation of Kuwait, the Panel determined that it would award compensation based on an average monthly transfer amount per claimant nationality group. Consistent with its application of a multiplier of seven to C6-Salary losses, the Panel determined that valuation of compensable C5-BA losses in Iraq should be based on the lower of (a) the amount claimed by the claimant, or (b) the average monthly transfer amount increased by a multiplier of seven.

(v) Recommendations for claims for C5-BA losses in Iraq included in the seventh instalment

238. There are 2,266 claims for C5-BA losses in Iraq included in this instalment. The Panel has recommended compensation in 90 claims and has not recommended compensation in 2,176 claims. Including the five claims resolved in the first instalment, the Panel has resolved a total of 2,181 claims for C5-BA losses in Iraq.

2. Claims for losses arising from stocks or securities ("C5-SOS")

(a) Findings of the Panel in the first instalment

239. On the "C5" page of the claim form, claimants are requested to provide the name of the issuer of the stocks and securities claimed, details of the quantity of stocks, their value on 1 August 1990 and the amount of loss. In its consideration of eight C5-SOS losses in the first instalment, the Panel determined that the limited number of such claims in the first instalment, their diversity and the absence of any specific Governing Council decisions affecting such claims required individual evaluation of each claim. Still, the Panel made some general determinations to be applicable to future instalments.

(i) Fact of ownership

240. To prove the fact of ownership, the Panel determined that claimants should have submitted copies of certificates issued by institutions in which or with which, they had made investments, together with correspondence concerning any settlements offered by the institutions in respect of the investments. In the case of bearer instruments such as checks, claimants should have submitted copies made out in their favour.

(ii) Fact of loss and causation

241. The Panel held that claimants must prove the fact of loss of the stocks or securities that are the subject matter of the claim, by submitting correspondence with the issuing house in which or with which they had an investment. The correspondence should acknowledge the loss of the investment. The Panel found that personal statements of the claimants were sufficient to prove causation. However, the claimant had to show that the loss claimed was suffered directly by the claimant, rather than indirectly, e.g., through a loss in value of the shares or the investment because the company in which the claimant had invested had itself suffered losses as a result of Iraq's invasion and occupation of Kuwait.

242. The Panel determined further that, subject to proof of ownership and value, the loss of bearer instruments constituted compensable securities

losses. [225] In the case of bearer instruments, claimants were required to explain why the loss was incurred.

(b) Commission jurisprudence since the first instalment

243. The "D" Panel considered claims for stocks and securities in part one of its second instalment. [226] The "D" Panel denied three claims arising out of equity investments in Kuwait, in part because the claimants had already accepted settlements in respect of the diminution in the value of their investments. [227]

(c) Findings of the Panel for C5-SOS losses in the seventh instalment

244. There were approximately 1,800 category "C" claims with C5-SOS losses when reviews of this loss element began. Claimants requesting compensation for C5-SOS losses were overwhelmingly from Jordan, Egypt, India, Pakistan and Bangladesh. Sampling projects were therefore implemented for these claimant groups. The reviews determined that the majority of C5-SOS entries were erroneous. [228] Claimants most often claimed for lost or stolen cash, gold, losses in forced currency conversions, prepaid rent, fees paid in respect of deposits for telephone or electricity service, and employment-related pension funds or other benefits. Most claims were generally reclassifiable to other loss elements, primarily to C4-CPHO and secondarily to C6-Salary losses.

245. Where bearer instruments such as checks were presented, the Panel considered the type of check (cashier or bank draft versus third party personal check) and the date on the face of the check to be determinative factors. Where a check had been issued shortly prior to or shortly after 2 August 1990, the presumption was that the check's non-negotiability related directly to the invasion and occupation of Kuwait. [229] In several situations involving bearer instruments, the C5-SOS amounts were related to business operations of the claimants and thus were recategorised as C8 business losses or added to existing C8 business loss amounts. Still, some few valid and compensable C5-SOS losses were found among the sampled claims and, where appropriate, [230] were recommended to receive compensation to the extent that primary evidence of valuation in support of the losses was provided.

246. General conclusions could not be drawn in respect of the claims that were not sampled. However, because results of the samples determined that claimants had typically incurred some pecuniary losses no matter how they were described, and because the majority of such losses could be recategorised as C4-CPHO losses, the Panel determined that, where claimants from Jordan, India, Pakistan and Bangladesh had not already claimed for C4-CPHO losses, amounts claimed for C5-SOS losses should be recategorised to C4-CPHO losses and awarded compensation in accordance with the C4-CPHO methodology.

247. Claims for C5-SOS losses were manually reviewed on an individual basis for all submitting entities other than Jordan, Egypt, India, Pakistan and Bangladesh. While the trends identifiable among the larger submitting countries were to a large extent duplicated among smaller submissions and C5-SOS losses were recategorised accordingly on an individual basis, some valid and compensable C5-SOS losses were identified. Each such loss was resolved on the merits of the evidence presented and valued in accordance with the primary evidence submitted in support of the loss.

(d) Claims for C5-SOS losses in the seventh instalment

248. The Panel has therefore considered and resolved all claims submitted for C5-SOS losses, either by recategorizing the losses to other loss elements or by resolving them in accordance with their individual merits. Of the 1,392 C5-SOS losses included in the seventh instalment, the Panel has recommended full or partial compensation in 102 claims and has not recommended compensation in 1,290 claims. Including the eight claims in the first instalment, the Panel has resolved a total of 1,400 claims for C5-SOS losses.

F. Loss type "C6": damages arising from loss of income, unpaid salaries or support

249. Pursuant to decision 1, claims may be made for lost wages or salary, support, and other employment-related losses. Moreover, decision 8 enables claimants to submit claims for MPA resulting from the deprivation of all economic resources so as to threaten seriously their survival and that of their spouses, children or parents, in cases where assistance from their Governments or other sources has not been provided. All employment-related losses may be submitted on page "C6" of the claim form. However, other than the claims for employment-related support and MPA that were considered in the first instalment, until the seventh instalment, the Panel has concentrated on issues relating to salary and other income losses.

1. Losses relating to unpaid salaries and other income ("C6-Salary" losses)

(a) Findings of the Panel in the first instalment

250. During its deliberations in respect of unpaid salaries and other income ("C6-Salary") losses, the Panel considered the extensive expatriate workforces in both Iraq and Kuwait, reflecting a wide variety of nationalities and cultures, as well as differing educational and professional levels.[231] In all, the Panel considered 1,092 claims relating to losses of salary and wages and 524 claims relating to other employment-related losses in the first instalment.

251. On the "C6" page of the claim form, claimants were requested to provide certain basic employment-related information relevant to verifying the fact of employment and the value of the losses. They were requested to indicate whether they had an employment contract, the name of the employer or employing organization, their employee identification number, the address and telephone number of their former employer and the length of time they were employed. They were also requested to state their monthly salary prior to the invasion.

252. In respect of this last, however, and reflecting employment practices in Iraq and Kuwait, a significant number of claimants indicated not only the salary or wage component of their income, but an amount which included allowances and benefits. Claimants who desegregated the salary or wage component of their incomes, typically claimed for their benefits and allowances separately in the field for "Other" employment-related losses, or even in the field for "Support" claims. Therefore, unless claimants had provided a specific itemization of the elements comprising their claim in a statement or the information could be ascertained from the documentation submitted in support of the claim, the Panel was generally unable to determine which components of a claimant's remuneration were reflected in the pre-invasion monthly or annual salary fields.

253. The Panel noted that employment-related claims comprised very different types of losses, often arose out of very different factual circumstances, and raised legal and valuation issues specifically relevant to the particular type of loss. Considering these losses to be among the most complex to be processed and that they did not lend themselves easily to mass claims processing procedures, the Panel adopted a methodology entailing (a) the review of sample claims; (b) the use of statistical data regarding the patterns of evidence and the amounts claimed; (c) a detailed study of employment-related legislation, international standards and factual information regarding employment practices in Iraq and Kuwait; and (d) the computerized application of a compensation formula based on all factors considered. [232]

(i) Proof of fact of employment

254. The Panel first considered whether claimants had established the fact of their employment either in Iraq or Kuwait or in a third country. The Panel took into account that the vast majority of claimants had responded with information that could be verified, submitted documentation in support of their employment in the form of work permits, visas, employee identification cards, civil identification cards, and could only reside legally in Kuwait if they were sponsored, most generally by an employer. The Panel also found it reasonable to presume that expatriates who were resident in Iraq prior to the invasion were there primarily for the purposes of employment. Thus, the Panel concluded that if a claimant had established the fact of residency in Iraq or Kuwait prior to the invasion

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and had provided some information confirming the fact of that employment, the claimant had proven the fact of employment in Iraq or Kuwait. [233]

(ii) Proof of causal link to the invasion and occupation

255. To the extent that an individual claimant had established the fact of residence in Iraq of Kuwait at the time of the invasion, the Panel found it likely that the claimant's employment-related losses resulted directly from the events surrounding the invasion and occupation of Kuwait. Thus, in the absence of evidence to the contrary, the Panel found it appropriate to apply a general presumption that the employment-related losses suffered by such a claimant were directly related to Iraq's invasion and occupation of Kuwait. However, the Panel also found that claimants who were employed in locations other than in Iraq or Kuwait could not benefit from the same presumption. [234]

(iii) Valuation of compensable claims for C6-Salary losses

256. Having accorded general presumptions to claimants in respect of being employed and having incurred losses related to that employment as a direct result of Iraq's invasion and occupation of Kuwait, the Panel also determined that all first instalment claimants could be deemed to have proven their asserted monthly or annual salary, wages, or income, under the terms of decision 1. [235] However, it could not make the same determination in respect of the proof offered in support of the employment-related losses. Even in instances where claimants had provided material and relevant evidence, the evidence often either did not support the amount claimed or the various elements upon which the amount was based, being probative only of one aspect of the loss. Therefore, the Panel determined that it could not rely on the documentation submitted to value the losses.

257. The Panel therefore considered various international standards and precedents as well as applicable Kuwaiti and Iraqi legislation. It found that a claimant's pre-invasion income reflected a wide variety of employment-related factors including: the remaining portion of a fixed-term contract, unpaid remuneration, allowances and benefits, holiday pay, end-of-year and other bonuses, payment in lieu of notice of termination of employment, severance pay and end-of-service indemnities and gratuities. Bearing in mind that a manual review of each income loss claim was not a viable option, the Panel found that the pre-invasion monthly income, as stated by the claimants, should be the point of departure for determining compensation. The Panel also noted that such compensation had to take into account the obligation of claimants to mitigate their losses. [236]

258. Therefore, taking into consideration all of the various criteria and the relative weight to be accorded to each, the Panel determined that a multiplier of seven should be applied to the claimant's asserted prior monthly salary, wage or income in order to determine the amount of

compensation awardable to claimants for wages and salary losses. Further, where separate claims were made by claimants for other employment-related losses, the amounts were factored into the calculation of the compensation awardable to claimants for their wages and salary loss claim.[237]

(b) Evolution of C6-Salary methodology since the first instalment

(i) Limitation of the multiplier result in claims for C6-Salary losses with prior monthly salaries in excess of US$750

259. The valuation methodology established by the Panel for C6-Salary claims in the first instalment applied a limit to the compensation recoverable by higher income claimants by awarding them the lesser of the amount resulting from the application of the multiplier of seven and the claimant's total amount claimed for C6-Salary losses.[238] Aware, however, that a large number of claims for wages and salary losses were submitted in category "C", the Panel noted that it would review the methodology developed in the light of evidentiary and other characteristics of future instalments of such losses.[239]

260. Accordingly, in its review of C6-Salary losses in the second instalment, the Panel conducted an extensive analysis to ascertain the level of evidence in support of C6-Salary claims, to assess the appropriateness of the seven multiplier, and to determine whether modification of the compensation cap level was warranted. Thus, based on the analysis of a statistical data-set composed of 60,374 C6-Salary claims, representing all submitting Governments and international organizations, the Panel was able to reach certain conclusions about the entire population of C6-Salary claims.

261. The Panel considered that approximately 60 per cent of the claimants in the data-set were found to have a monthly income below US$750, that over 92 per cent of claimants in the data-set submitted some form of evidence in support of their claims in addition to the claim form, that the level of evidence generally improved in proportion to the level of income claimed, and that many claimants in the low income group appeared to have considerable difficulty in expressing their income losses. Even then, many had submitted evidence of probative value. Moreover, the sampling results suggested that the Panel's valuation standard was not only efficient but constituted a reasonable and fair measure of the income losses incurred by the claimants. However, bearing in mind the distribution of monthly incomes and amounts claimed in the sample, the Panel found it appropriate to cap the compensation for claimants with monthly income levels above the low income cut-off level of US$750 per month.

262. Thus, in its second instalment, the Panel determined that, of the claimants qualifying for compensation for C6-Salary losses, those with pre-invasion monthly incomes exceeding US$750 should be awarded the lesser of

(a) the amount resulting from the application of the seven multiplier to their monthly income or (b) their total claimed income loss. Given that many of the claimants who earned US$750 or less per month appeared to have had difficulty in expressing their losses, and were among the lowest paid workers in Iraq and Kuwait, these claimants were compensated at the amount resulting from the multiplier formula without being subject to a cap. [240]

(ii) Considerations in respect of certain claims for C6-Salary losses with country of employment other than Iraq or Kuwait

263. The Panel had accorded presumptions both in respect of fact of loss and causation to claimants with C6-Salary losses who had proven that they were resident in Iraq or Kuwait prior to the invasion. However, for claims based on employment relationships not situated in Iraq or Kuwait to be considered compensable, the Panel determined that a claimant had to make a specific showing, substantiated by appropriate evidence that (a) the claim arose out of economic activity having a direct relationship with Iraq or Kuwait, or (b) the claimant's employment was directly affected by the Iraqi invasion and occupation of Kuwait. [241]

264. In the sixth instalment, the Panel considered approximately 2,000 claims with C6-Salary losses where the "country" field on the "C6" electronic page indicated that the location of employment was other than in Iraq or Kuwait. At that time, the Panel found that if claimants in such cases could establish the fact of prior residence in either Iraq or Kuwait by clear and convincing proof, the preponderance of the evidence would weigh in the claimant's favour and would support the compensability of a claim for C6-Salary losses, notwithstanding that the country of employment was stated as other than Iraq or Kuwait. Further, the fact of residence could be considered proven by the presence of a Kuwaiti civil identification number or an Iraqi residency permit number in the field provided for such data in the claim form. Additionally, the Panel held that those persons whose claims indicated that they had been held hostage in Iraq or Kuwait as a result of the invasion and occupation of Kuwait and who had, as a result, incurred employment-related losses because of Iraq's interference with their employment relationship could be compensated for C6-Salary losses claimed in accordance with the C6-Salary methodology. [242]

265. The Panel determined that those claimants who failed to establish the fact of residence in Iraq or Kuwait or the fact of direct interference with an employment relationship located outside Iraq or Kuwait were not eligible for compensation for C6-Salary losses. [243]

(iii) Additional use of statistical tools in C6-Salary losses

a. Determining prior monthly salaries in claims for C6-Salary losses

266. Application of the seven multiplier methodology to value C6-Salary losses required that the pre-invasion monthly salary be asserted by the claimant. Most often, if the claimant had not provided this amount in the claim form, it could be ascertained from documentation in the claim file during the secretariat's entry of claims into the database. The secretariat also undertook subsequent review projects specifically to address this situation among claims where monthly salary amounts had not been asserted. However, since the Government of Egypt had submitted claims directly to the Commission in electronic format, it had not been included in the secretariat's review projects. Therefore, in its fifth instalment, the Panel considered the issue of approximately 16,000 claims submitted by the Government of Egypt. All requested compensation for C6-Salary losses but had no amounts asserted in the pre-invasion monthly salary field of the electronic claim upon which to base the seven multiplier calculation.

267. The Panel considered its successful use of statistical models to value C1-Money and C4-CPHO losses, as well as its use of statistical analyses in confirming the effectiveness of the seven multiplier methodology. It further considered that a manual review of high numbers of claims was not feasible in the context of a mass claims processing programme and that this issue involved a largely homogeneous claimant population. Therefore, the Panel determined that a sample review be conducted for Egyptian claims with C6-Salary losses that did not have prior monthly salary amounts asserted, in order to ascertain monthly salaries from sample claims and extrapolate the results to the entire population. A linear regression model was developed from the sample results and used to predict the missing monthly salaries for the claim population.[244] The prior monthly salary supplied by the model was then used in the regular C6-Salary seven multiplier methodology, with the compensation cap applied to prior monthly salary amounts over US$750.

b. Determining total C6-Salary amounts claimed where the asserted prior monthly salary was in excess of US$750

268. As noted earlier, in its second instalment, the Panel had determined that claims with asserted prior monthly salaries less than US$750 would receive the full benefit of the seven multiplier methodology. Thereafter, the secretariat routinely applied the multiplier of seven to such claims without taking the total amount claimed into account. However, certain claims with monthly salaries in excess of US$750 could not be processed as they were because there was no amount against which the multiplier result could be compared and, where applicable, limited. After the results of an electronic survey which indicated that claimants in such situations provided enough information on the "C6" page to create a presumption that they could confirm the fact of their employment in Iraq or Kuwait, the

Panel, in the sixth instalment, authorized the use of statistically derived average recommended amounts to serve as a comparison and, where appropriate, limitation to the result of the seven multiplier.[245] These amounts were then deemed to be the aggregate "salary and wages" and "other" amounts for these claims so that the claims could be processed.[246]

c. Findings of the Panel in the seventh instalment

269. In its continuing review of claims for C6-Salary losses where the country of employment was located outside Iraq or Kuwait, the Panel came to conclusions in this seventh instalment affecting certain groups of similarly-situated claimants.

i. Claimants whose country of employment was Israel or Saudi Arabia and "military operations or threat of military action"

270. Pursuant to decision 1, claims may be made for employment-related losses as a result of, *inter alia*, "military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991". The phrase "military operations or threat of military action" has been extensively discussed in at least three reports by other Commission panels in relation to the issue of direct causation.[247]

271. The Panel of Commissioners for "F1" claims ("the "F1" Panel") considered the phrase in connection with the reimbursement of evacuation costs. After requesting that the secretariat undertake research, *inter alia*, on the range and use of Scud missiles during the period of Iraq's invasion and occupation of Kuwait and the location of any military actions that were conducted by either side in countries other than Iraq and Kuwait, the "F1" Panel concluded that "military operations or [the] threat of military action" were directed against Saudi Arabia and Israel in addition to Iraq and Kuwait. Not only had Iraqi ground forces actually crossed the Saudi Arabian border and engaged the Saudi Arabian and Allied Coalition Forces in combat, but Saudi Arabia and Israel had both been subjected to a series of Scud missile attacks launched by Iraq. Consequently, the "F1" Panel determined that costs incurred by Governments in evacuating citizens from Saudi Arabia and Israel should be compensated on the same basis as those costs incurred by Governments in evacuating persons from Iraq or Kuwait.[248]

272. The "E2" Panel reiterated the findings of the "F1" Panel in respect of Saudi Arabia but distinguished the causal inquiry for losses suffered outside Kuwait "simply because Kuwait was actually invaded and occupied by Iraqi forces while Saudi Arabia was not".[249] Therefore, the "E2" Panel concluded that claimants seeking compensation for losses or damage arising out of military operations in Saudi Arabia must make a specific showing that the losses or damage resulted from a specific military event or

events. If such a showing was made, the "E2" Panel concluded that the claimants would have established the requisite causal link between the loss or damage and Iraq's invasion and occupation of Kuwait. [250] More recently, the "E2" Panel found that losses suffered in Israel from 15 January to 2 March 1991, were the direct result of the credible and serious threat of military action directed at Israel that was intimately connected to Iraq's invasion and occupation of Kuwait. [251]

273. In the context of this report, the "C" Panel considered 377 claims for C6-Salary losses where claimants had been identified as being resident and employed in Israel and in Saudi Arabia prior to Iraq's invasion and occupation of Kuwait. The "C" Panel considered the findings and conclusions of the "F1" Panel, that both countries had been targets of Iraqi military actions, specifically Scud missile attacks, during the occupation period. The "C" Panel further considered the findings and conclusions of the "E2" Panel in respect of its requirement to show a causal link to Iraqi military operations and requested that the secretariat review the claims.

274. The secretariat reviewed a representative sample of 89 claims from both countries. Claimants residing in Saudi Arabia were predominantly from the Philippines, India and Thailand, whereas claimants residing in Israel were Israeli citizens. At least 82 per cent of claimants in the sample provided evidence in support of their C6-Salary losses. Most claimants claimed for lost salary for a period of three to five months, most generally corresponding to the three-month period of January to March 1991 when Iraqi military operations against both Israel and Saudi Arabia actually took place. Further, using an electronic survey to ascertain claimant locations, the secretariat was able to identify the areas in Saudi Arabia and Israel where all 377 losses occurred. In each case, geographical locations corresponded to sites of well-documented reports of Iraqi military operations or Scud missile attacks.

275. Considering the language of decision 1, the findings of the "F1" Panel, the findings of the "E2" Panel and the results of the reviews conducted by the secretariat for these claimants, the Panel determined that the claimants had established the requisite causal link to "Iraqi military operations or threat of military action" and should be compensated in accordance with the Panel's C6-Salary methodology. [252]

ii. Claimants who were prevented from going to Iraq for employment as a result of Iraq's invasion and occupation of Kuwait and subsequent military actions or threat of military actions or the breakdown in civil order during that period

276. The Panel determined that military operations or the threat of military action by Iraq could be of consideration in determining whether claimants' employment-related losses arose directly from Iraq's unlawful invasion and occupation of Kuwait in two other situations. In each situation, the claimants had been contracted, for several months in advance in some cases, to report for employment in Iraq on or around August 1990. The claimants in question had made expenditures and otherwise planned their lives in anticipation of their departure and subsequent employment in Iraq. In each situation, the employer was the Government of Iraq.

277. The first situation concerned approximately 2,700 claimants from Pakistan who had been engaged through a recruiting contractor to participate in a series of construction projects in Iraq and whose contracts were scheduled to commence on or around August 1990. The second situation concerned nine claimants from Poland who had initially been scheduled to report for work in Iraq in July 1990, but whose departure had been postponed by Iraq until August 1990. In both situations, the claimants claimed for C6-Salary losses only. In neither situation had the claimants been resident in Iraq before Iraq's invasion and occupation of Kuwait took place.

278. The Panel considered that the detrimental reliance of these claimants on their scheduled employment included forsaking positions or employment opportunities in Pakistan and Poland. The Panel also considered the fact that the employing party in each situation was Iraq itself and the fact that Iraq's invasion and occupation of Kuwait raised a credible and serious threat of retaliatory military action in Iraq so as to be a deterrent to travel to Iraq. A subsequent breakdown in civil order in Iraq could be inferred so as to raise serious individual safety concerns. The Panel therefore deemed these losses to be compensable in principle.

279. Because the Panel also recognized that the claimants not only had an obligation to mitigate their damages, but could be deemed to be better placed to do so than those who were resident in Iraq or Kuwait, it determined that they should in all cases be compensated the lesser of (a) the amount claimed, or (b) the amount resulting from the application of the seven multiplier to the monthly salary asserted. In arriving at this decision, the Panel took into account that the largest proportion of these claimants asserted a monthly salary of less than US$750. Because the claimants uniformly claimed for amounts that were less than they would automatically have been accorded under the seven multiplier methodology, the Panel considered these amounts to be the value of their detrimental reliance.

iii. Claimants who were employed in the United Kingdom by an Iraqi state-owned bank

280. In this instalment, the Panel also considered the situation of 27 claimants for C6-Salary losses, all former employees of a London-based branch of an Iraqi state-owned bank, who were made redundant as a result of the cessation of the bank's operations following Iraq's invasion of Kuwait. In this connection, the Panel considered that some of the redundancies occurred as late as July 1993. Claimants submitted personal statements asserting that, as a result of Iraq's invasion of Kuwait, they had been made redundant. They also provided primary documentation supporting their former employment, salary amounts and entitlements claimed.

281. The Panel took into account that these claimants had made specific showings, substantiated by appropriate evidence, that (a) their claims arose out of an economic activity having a direct relationship with Iraq, and (b) their employment was directly affected by the Iraqi invasion and occupation of Kuwait.[251] Although the Panel considered these C6-Salary losses to be generally compensable in accordance with the C6-Salary methodology, it found that those claims for losses after 1991 were too remote and did not meet direct causal requirements as the Panel generally interpreted them.

d. Recommendations for claims for C6-Salary losses in the seventh instalment

282. The seventh instalment includes 37,925 claims for C6-Salary losses. Of that number, 36,597 have been recommended for compensation and 1,328 have not been recommended for compensation. Throughout the category "C" claims programme, of a total of 216,438 C6-Salary losses, 212,200 have been recommended to receive compensation and 4,238 have not.

2. Losses related to support on the "C6" page ("C6-Support")

(a) Findings of the Panel in the first instalment

283. Claimants could also request compensation for loss of employment-related support on the "C6" page. During its review of amounts entered in the "support" field of the "C6" page, the Panel observed that many of the amounts actually represented items that were more properly classified under to the "other" field, e.g., end-of-service gratuities or benefits, perquisites and allowances. Other claimants used the field to claim for support payments received from a family member prior to the invasion, but which they no longer received due to the loss of that family member's employment as a consequence of the invasion and occupation.

284. In view of the diversity of claims submitted as C6-Support, the Panel determined that only claims resulting from the following or similar circumstances should be classified as employment-related support claims:

(a) claims by gainfully employed persons whose ability to work had been permanently or temporarily affected as a result of a permanent or temporary disability or other injury;

(b) claims by persons who were not employed, but who, as a result of a permanent disability, might never be able to be fully employed;

(c) claims by family members of wage earners in Kuwait or Iraq, who were unable to continue making certain payments such as alimony, regular dependent payments, subsistence payments, etc. to those family members, due to having lost their employment as a result of Iraq's invasion and occupation of Kuwait, or as the result of some permanent or temporary disability.[254]

285. Claims arising out of factual circumstances other than those identified in paragraph 284 supra, were reclassified as more appropriate loss elements. As a result, only five claims were considered as true C6-Support losses and were addressed in the first instalment. The Panel considered each case on its merits. Thus, the specific evidentiary items submitted by the claimants relevant to establishing their entitlement to compensation for lost support were dispositive in each situation.

(b) Jurisprudence of the Commission in respect of employment-related support losses

286. The "D" Panel considered loss of employment-related support in its first instalment and observed confusion among "D" claimants similar to that observed by the "C" Panel among "C" claimants. It therefore made no specific findings and evaluated claims for "support" as "loss of income" claims.[255]

(c) Findings of the Panel in the seventh instalment

287. Since the first instalment, the majority of claims originally submitted as C6-Support losses have routinely been reclassified as C6-Other and thereafter included in the C6-Salary methodology.[256] Exceptions occurred only (a) where the "support" amount was clearly identifiable as a second employment for the claimant or the separate employment of a spouse, or (b) where the losses resulted from the circumstances enumerated by the Panel in paragraph 284 supra and could thus be considered as true claims for C6-Support losses.

288. In the first exception, if it was ascertained that the claimant intended to claim for lost salary from a second employment, the loss was

considered as a second C6-Salary claim, and the claimant was compensated in accordance with the C6-Salary methodology. However, if it was ascertained that the "support" amount pertained to the employment of a spouse, it was necessary to set the claim aside as a "multiple" claim until issues of duplicate recovery could be reviewed.[257]

289. For the comparatively small number of true candidates for C6-Support losses, a review of the claims led the Panel to observe that its original C6-Support categories could be expanded to include:

(a) claims by family members who, prior to the invasion, had been receiving death benefits on behalf of a deceased family member;[258]

(b) students who had lost scholarship grants for study in Kuwait; and

(c) students who had been receiving tuition assistance for education in third countries from public or private entities based in Iraq or Kuwait.

290. The Panel determined that to the extent claimants could establish their entitlement to C6-Support, the fact of its loss and that the loss was attributable to Iraq's invasion and occupation of Kuwait, their losses were deemed to be compensable. The Panel determined further that, valuation of C6-Support losses should be computed by taking the stated or ascertained value of the monthly support amount and computing a recommended award amount in accordance with the C6-Salary methodology with one modification. In view of the fact that claims for C6-Support could not be presumed to include the same entitlements as did claims for C6-Salary, the C6-Support amount awarded was always capped at the lesser of (a) the amount claimed by the claimant, or (b) the amount calculated by the application of the seven multiplier to the prior monthly support amount.

(d) Recommendations for claims for C6-Support losses in the seventh instalment

291. There are 819 claims for C6-Support losses that were considered in this instalment. The Panel recommended compensation for 817 claims and did not recommend compensation for two others. In total, the Panel considered and resolved 822 claims for C6-Support losses.

3. Claims for MPA on the "C6" page ("C6-MPA")

292. Decisions 3 and 8, taken together, define and propose a compensation ceiling amount of US$2,500 per claimant and US$5,000 per family for situations where it can be demonstrated that an individual or family was deprived of all economic resources so as to threaten seriously the survival of the claimant and all eligible dependents (spouse, children or parents),

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in cases where assistance from the claimant's Government or other sources had not been provided. Claimants could indicate that they were making such claims by ticking the appropriate box on the "C6" page. The instructions on the claim form clearly provide that "[s]uch claims must be substantiated by documentary and other appropriate evidence".

(a) Findings of the Panel in the first instalment

293. In the first instalment, the Panel considered 52 claims for C6-MPA. In its consideration of such claims, the Panel determined that, for a claim to be considered compensable, it should be clearly observable from the claim form and the attached documents that (a) the claimant was deprived of all economic resources; (b) such deprivation of economic resources seriously threatened his or her survival and that of his or her family; (c) the claimant did not receive or was not entitled to any form of assistance from public or private sources (e.g., social security or other Government aid, room and board with a family member, etc.) and (d) the resulting MPA occurred during the invasion or after the claimant's departure from Iraq or Kuwait.

294. Relying on advice from a panel of psychiatric experts, the Panel determined further that a claimant should receive the ceiling amount compensable under the criteria of decision 8 (a) if there were one or more dependent family members, including a spouse, children or parents, or (b) if the claimant had suffered a serious personal injury or disease of such a nature as to prevent the performance or exercise of his or her profession or employment. Based on these stated considerations, the Panel arrived at its recommendations for the first instalment.

(b) Findings of the Panel in the second instalment

295. In the second instalment, the Panel observed that claims submitted by Egypt in electronic format uniformly claimed for C6-MPA losses. Sampling projects undertaken by the secretariat compared the paper and electronic versions of the claims and ascertained that there was no indication that claimants had ticked the MPA box on the "C6" page of the paper claims. Nor had they presented documentation in support of C6-MPA losses. These results led the Panel to conclude that the claims for C6-MPA losses had not been intentionally submitted by claimants from Egypt. Subsequent reviews of Egyptian claims in connection with non-fast track losses and other issues have served only to confirm this conclusion. Therefore, since the second instalment, compensation for C6-MPA losses submitted by Egyptian claimants has routinely been rejected.

(c) Findings of the Panel in the seventh instalment

296. The Panel considered approximately 800 claims for C6-MPA losses in the seventh instalment, more than 500 of which were submitted by claimants

from three countries and one international organization: Yemen, Jordan, Bangladesh and UNDP Jerusalem. Of those claimants, most were found to have left Kuwait after 2 March 1991, and generally not as a direct result of the invasion and occupation. Most other claimants for C6-MPA in those same populations had departed from Iraq or Kuwait prior to 2 August 1990. For the approximately 300 claims for C6-MPA remaining, no general departure trend was discernible and each claim was evaluated on the basis of the documentation presented in support of the C6-MPA loss.

297. The Panel observed that most claimants for C6-MPA simply ticked the "C6" MPA box without providing any documentation in support of the loss or describing the circumstances of the loss. Therefore, the presumption was that C6-MPA losses were not generally compensable. However, considering all circumstances applicable, and in an effort to identify claimants who were among the most vulnerable claimant groups and who were most likely to have been without any financial recourse, the Panel determined that a claimant could be presumed to have suffered C6-MPA, even without providing the requested documentary support, in two instances:

(a) where a claimant had submitted a compensable C2 claim for a serious personal injury (dismemberment, disfigurement, loss or limitation of use, sexual assault, aggravated assault or torture) in combination with a claim for C6-MPA; and

(b) where a claimant had departed from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991 and had his claim submitted through an international organization rather than through a Government.

298. In all other situations, the Panel found that, for a claim for C6-MPA to be compensable, the claimant must have manifestly met the requirements specified on the claim form and specified by the Panel in its First Report. Once compensability was demonstrated, claimants were eligible to receive amounts of US$2,500, or, if eligible family members were identified in the claim, US$5,000. [259]

(d) Recommendations for claims for C6-MPA losses in the seventh instalment

299. In the seventh instalment, the Panel considered 13,207 claims for C6-MPA losses. The Panel recommended compensation in 179 claims and did not recommend compensation in 13,028 claims. During the category "C" claims programme, the Panel considered a total of 77,192 C6-MPA losses.

G. Loss type "C7": damages arising from real property-related losses ("C7" real property)

300. Paragraph 14 of decision 1 provides that payments of compensation are available for "losses of income ... housing or personal property" resulting from Iraq's unlawful invasion and occupation of Kuwait. Page "C7" of the

category "C" claim form allowed individuals to submit claims for losses related to real property, including costs incurred for repairing damage and other losses. While the claim form specified "repair costs", it did not specify the nature of other real property-related losses that could be claimed.

1. Findings of the Panel in the first instalment

301. In the first instalment, the Panel considered 35 C7 real property losses. Most were for property located in Kuwait, none were for property located in Iraq and some were for property located in third countries. In arriving at its conclusions in the first instalment, the Panel took into account that ownership of real property in Kuwait is generally restricted to Kuwaiti citizens.[260]

302. The Panel considered the extensive documentation available on damage to real property in Kuwait and noted similarities to the situation of personal property. The main causes of real property losses were the systematic destruction, as well as the looting and vandalism, that occurred during the invasion and occupation period. Additional causes of damage to real property included damages that occurred during the Allied Coalition Forces offensive against Iraq, damage from environmental conditions in Kuwait resulting principally from smoke from burning oil wells, and the cost of clean-up operations in Kuwait following the country's liberation from the Iraqi occupation.[261]

303. Damage and destruction to real property were inflicted on commercial buildings and apartment complexes as well as private residences. Moreover, the mass dislocation of most of the population from Kuwait after the invasion left buildings vacant, where prior to the invasion the occupancy rate for rental property was from 85 to 90 per cent. Thus, early in its first instalment experience with C7 losses, the Panel determined that it would consider claims for losses of rental income in addition to those for repair costs as C7 losses.[262]

304. The Panel noted further that the composition of the C7 losses in the first instalment was rather homogeneous, which permitted the Panel to assess the majority of real property claims on a standardized basis. The Panel's expectation was that homogeneity in respect of this loss would be repeated in future instalments. The relatively low number of claims considered in the first instalment also facilitated a more detailed review of evidence in support of ownership and the amounts claimed. Therefore, to the extent permitted in terms of the scope of the first instalment, the Panel endeavoured to develop criteria that could be applicable to claims in future instalments of C7 claims.

305. To give effect to the Governing Council's guidelines and standards, the Panel reviewed the claims to verify that claimants had established: (a)

the fact of ownership of the real properties on which their claims were based; (b) the fact of their losses and that they were causally related to Iraq's invasion and occupation of Kuwait; and (c) the value of their claims.[263]

(a) Fact of ownership of C7 property

306. Virtually all claimants in the first instalment provided evidence in support of the fact of ownership of the real property concerned, providing documents of title, sales contracts, bank documents evidencing loans, lease agreements or documents issued by governmental agencies so that the Panel did not have to consider whether an evidentiary standard reflecting proof of a lesser quality might properly be applied to claims demonstrating particular factual circumstances. The Panel's expectation was that the standard of documentary evidence provided in support of the fact of ownership would be of equally high quality in future instalments.

(b) Fact of loss and causal relation to invasion

307. The Panel found that the assertions of real property damages in the claims for C7 real property losses reviewed fit squarely into the overall pattern of losses suffered as a result of Iraq's invasion and occupation of Kuwait and that the claims as a whole were consistent with the findings and conclusions stated in the United Nations reports and other information sources regarding the damages incurred. Further, the Panel noted that the claim files contained documentation describing the particular circumstances of the losses claimed. In the case of claims for repair costs, the files also included copies of bills, receipts or estimates from expert appraisers, thus generally establishing both the fact and amount of damages. Concerning losses of rental income, claimants explained that rental units had remained vacant for significant periods, due to the departure of former tenants or because units were uninhabitable because they had been damaged during the invasion and occupation period.

(c) Valuation of claims for C7 repair costs

308. The claim form allowed claimants to express their losses from damages to real property on the "C7" page of the claim form in terms of the "estimated cost of repairs not yet completed" and the "actual cost of repair work already completed". The Panel observed that repair costs included costs of labour and materials for repairs to structures. Claimants generally submitted relevant primary evidence in the form of receipts, invoices and copies of bills to document claims for repair already performed and expert appraisals or estimates for repairs not yet performed.

309. In the first instalment, the Panel adopted the following criteria for determining the amount of compensation payable for repair claims for real property located in Kuwait:

(a) claims for repair costs up to US$20,000 [264] must have provided at least a statement in support of the amount claimed that includes (i) a description of the damages, and (ii) an explanation of the costs incurred; and

(b) claims for repair costs for more than US$20,000 must have provided documentary evidence in the form of receipts, invoices, copies of bills or expert appraisals in support of the amount claimed. [265]

(d) Valuation of claims for C7 losses of rental income

310. In its valuation methodology for losses of rental income, the Panel considered that evidence in support of the losses should be reasonably accessible to most claimants, even after the invasion. Thus, sales contracts and title documents establishing ownership, as well as lease agreements documenting the location of the property, the names of the landlord and the tenant, the number of units and monthly rental amounts were considered to be most persuasive. The Panel observed that virtually all claimants for rental income losses had submitted such documentation.

311. In formulating its methodology, the Panel considered several factors particularly relevant. These included: (a) the period of the invasion and occupation during which damages were inflicted and during which many landlords and tenants were absent; (b) a reasonable period immediately thereafter to account for continued vacancies; (c) the need to rehabilitate and refurbish structures and the delays in obtaining necessary materials and labour; (d) basic principles of mitigation in that the claimants should have made reasonable efforts to re-let their rental units; (e) practical considerations involved in mass processing; and (f) concerns of fairness to all claimants and to Iraq in the development of an equitable approach.

312. Taking all of the above factors into account, the Panel determined that compensation amounts awardable in claims for C7 losses of rental income would be determined by applying a multiplier of ten, representing a ten-month period, to the monthly rental rate established for each of the rental units underlying the claim.

(e) Claims for C7 real property losses located outside Kuwait

313. In its review of claims submitted by non-Kuwaitis in the first instalment, the Panel determined that all claimed losses related to the loss of rental income that would have had been received by the claimants from properties in their respective home countries prior to the invasion. The income ceased when claimants relocated to those countries. The losses

were accordingly recategorised and resolved as relocation costs on the "C1" page. Thus, in the first instalment, the Panel found that the real property losses that may be claimed on the "C7" page were effectively limited to real property located in Iraq or Kuwait. [266]

2. Findings of the Panel in the seventh instalment

314. In its consideration of approximately 10,000 claims for C7 real property losses in the seventh instalment, the Panel has found it necessary to modify its first instalment methodology in respect of valuation of losses to take into account the requirements of mass claims processing. Further, the Panel has not only addressed real properties located in Kuwait, but also those located in Iraq and in Israel, in addition to resolving issues concerning claims submitted both by Kuwaiti and non-Kuwaiti nationals. In its seventh instalment review of C7 real property losses, the Panel utilized sampling techniques for Kuwaiti claimants and conducted individualized review in all other cases.

(a) Claims for C7 real property losses located in Kuwait

(i) Claims submitted by Kuwaiti nationals

315. Of the approximately 10,000 claims for C7 real property losses that were considered by the Panel in this instalment, approximately 9,100 were submitted by Kuwaiti nationals. Sample review projects confirmed the trends for this claimant group that were observed by the Panel in the first instalment in respect of proof of ownership, fact of loss and primary documentation submitted in support of C7 real property losses. Reviews of sample claims determined that claims presented were either for repairs, completed or not completed, or for other costs, in addition to rental income. The Panel therefore determined to treat the aggregate "repairs completed" and "repairs not completed" as C7 repair costs ("C7-Repairs") and the aggregate of rental income and other costs as C7 other costs ("C7-Other").

316. Considering that the experience in the first instalment had involved detailed review of these C7 real property losses and that this claimant group was fairly homogeneous, the Panel elected both to extrapolate conclusions from the sample reviews to the Kuwaiti claimant population and to modify its methodologies from the first instalment so that they could be programmatically applied in the context of mass claims processing.

a. Claims for C7-Repairs

317. In consideration of the fact that sample review projects had shown that Kuwaiti nationals claiming in excess of US$20,000 had submitted primary evidence supporting 96 per cent of the amounts claimed for C7-Repairs, and keeping in mind the US$20,000 threshold applied in its first

instalment, the Panel determined that, in the context of mass claims processing, all claims submitted by Kuwaiti nationals for C7-Repairs should be valued in accordance with the following formula:

(a) for an amount claimed less than or equal to US$20,000, the award should equal the amount claimed;

(b) for an amount claimed in excess of US$20,000, the total award should equal US$20,000 increased by 96 per cent of the amount claimed in excess of US$20,000. [267]

b. Claims for C7-Other (rental income and other)

318. Once again, considering the results of sample review projects which demonstrated that Kuwaiti nationals who claimed in excess of US$20,000 had submitted primary evidence supporting 90 per cent of the amounts claimed for C7-Other, and keeping in mind the US$20,000 threshold applied in its first instalment, the Panel determined that, in the context of mass claims processing, all claims submitted by Kuwaiti nationals for C7-Other should be valued in accordance with the following formula:

(a) for an amount claimed less than or equal to US$20,000, the award should equal the amount claimed;

(b) for an amount claimed in excess of US$20,000, the total award should equal US$20,000 increased by 90 per cent of the amount claimed in excess of US$20,000. [268]

(ii) Claims submitted by non-Kuwaiti nationals

319. In spite of restrictions on property ownership by non-Kuwaiti nationals, the Panel determined in three situations that non-Kuwaiti claimants had demonstrated the requisite facts of ownership, loss and causation and recommended that the three claims be awarded compensation for C7 real property losses in accordance with the valuation methodology applied to claims submitted by Kuwaiti nationals as described in paragraphs 317-318 supra.

(b) Claims for C7 real property losses located outside Kuwait

(i) Claims for C7 real property losses located in Iraq

320. The Panel considered four claims for C7 losses that were submitted by non-Iraqi nationals for real property owned in Iraq. Two were submitted by non-Iraqi spouses of Iraqi nationals who claimed essentially for loss of use because they could not return to Iraq to live on the property. However, they did not allege or show in any manner that the property had been damaged or destroyed. The Panel did not recommend compensation in

these situations. A third claimant failed to prove the fact of ownership and did not describe the circumstances of the loss or provide documentation in support of valuation. The Panel therefore did not deem this claim to be compensable. In the final situation, however, a claim was submitted by a non-Iraqi national for property owned in Iraq that had been destroyed as a result of bombing by the Allied Coalition Forces. The Panel deemed this claim to be compensable. However, because the claimant had claimed for approximately US$76,000 but had not provided primary evidence of value, the Panel recommended that his recovery be limited to a maximum amount of US$20,000.

(ii) Claims for C7 real property losses located in Israel

321. As discussed in connection with C6-Salary losses in Israel at paragraphs 270-275 *supra*, the Panel determined that certain losses had occurred in Israel as a result of Iraq's "military operations or threat of military action", specifically, Scud missile attacks in certain areas of Israel in January and February 1991, and thus could be causally linked to Iraq's invasion and occupation of Kuwait so as to justify an award of compensation.[269] The Panel considered 75 claims for C7 real property losses that were submitted by Israeli claimants. Because the information supplied in the claims was not consistent enough for mass claims processing, each claim was reviewed on an individual basis.

322. During review, claims were recategorized to other loss elements such as C4-CPHO, where appropriate. If claimants could not prove ownership of the real property claimed for, no compensation was recommended. However, where claimants had proven the fact of ownership and it was determined that the real property was located in an area known to have been the site of a Scud missile attack,[270] the Panel considered that the prerequisites for compensation had been met. Compensation was then recommended in accordance with whether the claim was for C7-Repairs or C7-Other losses, in consideration of the primary valuation evidence provided in the claim file, and in consideration of the US$20,000 evidentiary threshold. In all cases where it was determined that claimants had already received compensation, in whole or in part, amounts of such compensation were deducted from the total amount claimed prior to the determination of the compensation amount.

323. Taking all circumstances and review results into consideration, the Panel awarded compensation for C7 real property losses in 66 individual claims where the real properties were located in Israel. In 33 of those claims, the amounts awarded were less than or equal to US$20,000.

(iii) Claims for C7 real property losses located in countries other than Kuwait, Iraq or Israel

324. The Panel reviewed 471 claims for C7 real property losses that were submitted by non-Kuwaiti nationals. The review focused principally on

whether the amounts claimed for C7 losses had been entered in error and would thus require recategorization to another loss element. The review determined that, in 74 per cent of the claims reviewed, the loss amounts were intended to be C8 business losses, C4-CPHO, C6-Salary, C5-bank account or securities, or C1-Money and reflected erroneous interpretations by the claimants. Thus, amounts were transferred in accordance with the nature of the loss claimed, providing that the amounts did not already exist in the correct loss category. For 85 claims reviewed, the Panel recommended neither transfer of amounts nor compensation as C7 real property losses.[271]

325. Of ten claims that were properly submitted for C7 real property losses by non-Kuwaiti nationals, the Panel determined that none was compensable as a C7 loss. The situations identified by the Panel as noncompensable included: (a) selling real property at a lower than market price due to financial need; (b) asserted inability to pay a mortgage or property-related loan that led to foreclosure; (c) inability to finish remodelling or repairs due to cessation of income; and (d) foregone rental income because of forced sale of property. In each of these situations, however, the Panel determined that, to the extent the amounts claimed were not already included in appropriate related categories such as C1-Money, C4-CPHO, or C6-Salary, they could be incorporated into the total amounts claimed for one of those losses and be valued in accordance with those methodologies.

(c) Recommendations for claims for C7 real property losses in the seventh instalment

326. In the seventh instalment, the Panel considered 16,443 claims for C7 real property losses. The Panel recommended compensation in 11,884 claims and did not recommend compensation in 4,559 claims.

H. Loss type "C8": damages arising from individual business losses ("C8-Business")

1. Legal framework for consideration of C8-Business losses

327. Paragraph 5 of decision 1 provides that business losses of individuals may be submitted under the expedited procedures set forth therein. Further, decision 4 describes the business losses of individuals that are eligible for consideration under the expedited procedures. Decision 4 provides that claims for business losses are compensable when they occurred under circumstances in which, among others, a claimant was prevented access to the business, and in which removal, looting and destruction of the business premises, equipment and stock took place. It thus provides that claims may be made for loss of tangible assets, damage to intangible assets, loss of business income and losses in connection with business contracts, if those losses resulted directly from Iraq's invasion and occupation of Kuwait.

328. Decision 9 describes the types of business losses that could have directly resulted from the invasion, discusses the applicable legal principles for such loss types, defines Iraq's liability therefor, and provides guidance for valuation methods. Finally, decision 15 stipulates that losses actually suffered as a result of Iraq's invasion and occupation of Kuwait that would have been suffered, irrespective of the trade embargo, are compensable. [272]

329. Individuals seeking compensation for their business losses submitted claims in category "C" by completing the "C8" page of the category "C" claim form. Claimants were requested to provide the following identifying data: (a) the name and address of the business; (b) the name under which the business license was held; (c) the country of the business, Kuwait, Iraq or other; (d) the business identification number; (e) and the Chamber of Commerce identification number. Claimants were also requested to indicate the legal status of the business, selecting among proprietorship, partnership, corporation or joint venture, [273] to state the number of years in the business and to indicate whether the business had resumed functioning. Finally, the form instructed claimants (a) to describe the circumstances of the loss and the steps taken to mitigate damages, and (b) to submit appropriate documentary evidence supporting the calculated value of loss.

2. Findings of the Panel in the first instalment

(a) Composition of claims considered in the first instalment

330. The Panel's findings and processing methodology in the first instalment were, to a certain extent, driven by the claims themselves. In the first instalment, the Panel considered a total of 134 claims for business losses, from six submitting countries. Of this number, 125 claims were from Pakistan. [274] The fairly homogeneous composition of the claims permitted the Panel, notwithstanding the potential diversity and complexity of this loss element, to assess the majority of business claims in the first instalment on a standardized basis. In addition, the relatively low number of claims for C8-Business losses in the first instalment facilitated a detailed review of the evidence in support of the claims.

(b) Business practice in Kuwait and the "rent-a-permit" system

331. At the outset, the Panel considered relevant background facts about the business climate, activities and practices in Kuwait. [275] The Panel found it significant that the most common form of business in Kuwait was the sole proprietorship or "establishment", which was primarily used for small businesses, and which had no separate legal identity. Kuwaiti law requires that a person who wishes to start a business must obtain a permit from the Ministry of Commerce and Industry. In principle, only Kuwaiti nationals qualified for such a license. [276] Therefore, in respect of the

general background information concerning the business environment in Kuwait, the Panel took particular note of the existence of a common practice whereby a person who wished to undertake commercial activities rented a permit from a Kuwaiti permit holder. The widespread use of these "rent-a-permit" arrangements allowed many non-Kuwaiti nationals to engage in commercial activities in Kuwait. [277] This informal permit system adversely affected the general ability of non-Kuwaiti claimants to provide documentary evidence in respect of the existence of the business and its ownership.

332. The Panel also took note of other significant business practices in Kuwait such as the prevalence of cash-based transactions, the reliance on verbal agreements as opposed to written contracts and the absence of taxes or provisions for insurance, all of which served as disincentives to maintaining written records, particularly for most small businesses. However, the Panel observed that damages to businesses in Kuwait had been extensively documented both in United Nations-sponsored reports and in submissions made by and reports prepared on behalf of the Government of Kuwait. Taken together, such sources provided a comprehensive picture of the widespread destruction visited upon nearly every sector of the Kuwaiti economy.

(c) Erroneous completion of claim form

333. The Panel noted that a sizeable number of claimants seeking compensation for C8-Business losses appeared to have misinterpreted the claim form and had recorded the losses on one or several inappropriate loss pages, frequently in combination with other losses. Claimants had also included the C8 amounts as a "claim for other damages" ("CS-Other") on the claim form summary page. Thus, a number of the claims for C8-Business losses had to be recategorized in order to reflect what the Panel believes to have been the claimant's intent.

(d) Criteria for compensability in the first instalment

334. The Panel developed certain criteria to determine compensability of claims for C8-Business losses: (a) the existence of an operating business; (b) the eligibility of the claimant to claim in category "C"; (c) the fact of ownership; and (d) the fact of loss and its causal relationship to the invasion. If all of these criteria were met, a claim for C8-Business losses was deemed by the Panel to be compensable. [278]

(i) Existence of an operating business

335. Given the circumstances of the invasion and occupation, the general circumstances of the business environment in Kuwait and the existence of quasi-legal and unofficial relationships for conducting business, the Panel recognized that individual claimants for C8-Business losses were at a particular disadvantage in furnishing specific evidentiary items to prove the existence of their business. Most claimants submitted a brief statement to the effect that they were operating a business. The Panel was also able to ascertain information from the claim forms such as the name of the sponsor, the address of the business, the name of the license holder, the business identification number, the Chamber of Commerce identification number, and the claimant Kuwaiti civil identification number. The Panel considered, as it had in connection with C6-Salary losses, that it was generally impossible for non-Kuwaitis to reside in Kuwait without employment. It therefore determined that all data mentioned, taken together, may be deemed to constitute evidence of the business.

(ii) Eligibility of the claimant

336. In order for the claimant's C8-Business loss to be eligible for compensation, decision 4 stipulates that it must be submitted on behalf of an unincorporated business, such as a sole proprietorship or certain forms of partnership. The Panel observed that many claimants in the first instalment either indicated that their business was a sole proprietorship or did not indicate the business status at all. Thus, in addition to considering all information before it, the Panel also considered external background data in respect of particular categories of claimants and types of business with which claimant groups were generally associated. Considering all information and circumstances, as well as the information provided in the claim forms and files, the Panel was satisfied that, with one exception,[279] all claimants in the first instalment were eligible to submit their C8-Business losses in category "C".

(iii) Ownership

337. The claim form did not stipulate that the claimant must submit evidence establishing ownership of the business at issue. However, the Panel determined that the very submission of claims for C8-Business losses implied an assertion of ownership and could be taken as personal statements to that effect.[280]

(iv) Fact of loss and causation

338. Following a comparative analysis of all claims in the first instalment, particularly in the light of the types of business activities represented therein, the Panel found that the claims were predominantly based on the loss of tangible assets. A much smaller group of claimants sought compensation for various forms of lost business income. Implicitly, claimants contended that the assets of their businesses, mostly consisting

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of equipment and inventory, had been destroyed or lost through actions by Iraq.

339. Nearly all of the asserted damages relating to businesses established in Kuwait fit squarely into the overall pattern of business losses suffered as a result of Iraq's invasion and occupation of Kuwait and, as a whole, were consistent with the extensive documentation for such losses that had been compiled by United Nations-sponsored and other missions. The Panel therefore considered such general documentation to be appropriate as supplemental evidence and was satisfied that the fact of loss and its attributability to Iraq had been established for the majority of claimants, particularly in respect of claims for loss of physical assets.

340. The Panel acknowledged, however, that claims based on the inability of a business to collect its receivables presented more complicated questions of causation. In assessing such claims therefore, the Panel considered, inter alia, the date on which the debt became outstanding and the results of efforts to obtain payment.

(e) Valuation in the first instalment

341. The Panel concluded that various other data indirectly lent credibility to the overall losses asserted by the claimants, some within the claim form, some contained in the documentation submitted with the claims, and some included within available external data, such as statistics regarding the average length of stay in Kuwait. In view of the limited number of claims for C8-Business losses in the first instalment, the Panel did not therefore provide general valuation criteria, but determined compensation based on individual review of the circumstances of each claim. However, to facilitate a standardized processing method, the Panel took its guidance from "the reasonable minimum that is appropriate under the circumstances involved" language of decision 1 and applied a more exacting standard of evidence to claims of US$20,000 and over. Of the 133 claims for C8-Business losses that were compensated in the first instalment, 114 were awarded amounts less than or equal to US$20,000 and 19 were awarded amounts less than US$50,000.

3. Findings of the Panel in the seventh instalment

342. In its consideration of nearly 15,000 claims for C8-Business losses in the seventh instalment, the Panel first addressed questions in respect of claimant eligibility and location of the business.

(a) Eligibility of claimants

343. Decision 4 identified the business losses of individuals which were eligible for consideration under the expedited procedures of category "C" by providing, inter alia:

> "(a) The owner of a single proprietorship may claim for his business losses.
>
> ...
>
> (c) Losses suffered by a partnership which has no separate legal personality must, in principle, be claimed jointly by all partners."

344. Decision 4 also identified which business losses were not eligible for consideration in category "C" by providing that losses suffered by a business entity that has separate legal personality must, in principle, be claimed by the entity, but on another claim form.

345. Considering the jurisdictional concerns of decision 4, the Panel first requested the secretariat to review 150 claims for C8-Business losses that had been identified in the database via electronic survey as having separate legal personality. The review ascertained that 103 of those claims contained positive evidence of corporate status in the form of articles of incorporation, corporate registration of the business or other indications of separate legal personality.[281]

346. In accordance with decisions 1 and 4, the Panel found that the C8-Business losses in these claims were not eligible for expedited consideration in category "C". They have therefore been rejected as C8-Business losses. To the extent that the claimants submitted claims for other losses in category "C" for which they were eligible to receive compensation, the Panel considered those losses in accordance with its criteria therefor. The results have therefore been reported in this instalment. However, the Panel also recommended that the Executive Secretary arrange for the transfer of the ineligible C8-Business loss portions of the 103 claims to category "E", in accordance with article 32(3) of the Rules.

(b) Situs of the business outside Iraq or Kuwait

347. The Panel considered that the situs of a claimant's business was directly relevant to the C8-Business loss claimed for. Businesses situated outside Iraq and Kuwait that nonetheless incurred losses in Iraq or Kuwait could have certain presumptions arise concerning Iraqi causation in respect of those losses. The Panel generally found that where an individual's business losses took place in Iraq or Kuwait, they could be more easily attributable to Iraqi actions. However, for C8-Business losses to be compensable when the business was situated outside Iraq or Kuwait, the Panel required that the causal link be more fully substantiated.

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348. There were approximately 230 claims submitted by countries, excluding Israel, where the country of business was indicated to be other than Iraq or Kuwait. Reviews of claims for C8-Business losses situated elsewhere than in Iraq or Kuwait demonstrated that most businesses that were adversely affected by the Iraqi invasion of Kuwait were those operating commercial activities in Kuwait, and to a lesser extent, Iraq. After manual review, businesses in the majority of claims were found either to be physically located in Iraq or Kuwait or the claimants' losses were directly attributable to their being held hostage or forced to hide in Iraq or Kuwait.[282] Having thus satisfactorily demonstrated a presumptive causal link, the claims were evaluated in this instalment in accordance with the Panel's criteria for C8 losses. However, in 61 cases where businesses were physically located outside Iraq or Kuwait, claims were reviewed individually by the Panel.

349. In these situations, where claims for C8-Business losses for businesses that were not located in Iraq or Kuwait raised legal issues such as, inter alia, the existence of pre-invasion debt, shipping and receipt of goods, letters of credit, efforts made to mitigate losses or to receive payment from the contracting parties concerned, the Panel found that it often did not have enough information to make underlying determinations. Some claims for C8-Business losses located in countries other than Iraq or Kuwait were accordingly rejected outright.

350. For others, where the Panel could ascertain that claimants had indeed suffered C8-Business losses,[283] and that the losses had a causal link to Iraq's invasion and occupation of Kuwait, but that all legal and valuation issues pertaining to the losses had not been sufficiently detailed by the claimant, the Panel considered the totality of the business environment, the claimant populations concerned, the expedited nature of category "C" and the evidentiary requirement of the "reasonable minimum necessary under the circumstances" with a lesser standard for claims under US$20,000. In such cases, therefore, the Panel recommended that the claimants receive the lesser of the amount claimed for C8-Business losses or US$20,000.

(c) Situs of the business in Israel

351. The Panel reviewed 77 claims for C8-Business losses that were submitted by claimants from Israel.[284] The claims included (a) losses of individual business income related to the tourism sector; (b) losses from the destruction or damage to business premises, inventory and assets as a result of Scud missile attacks; and (c) losses of individual business income related to businesses other than those in the tourism sector, e.g., pharmacies, shops, or law offices. All businesses claimed for were operated or physically situated in Tel-Aviv or Ramat-Gan, a nearby suburb.

352. In view of the fact that Israel had not only been subjected to the threat of Iraqi military actions, but to specific military operations such

as the launching of Scud missile attacks, the Panel determined that the considerations and rationale for compensating C6-Salary and C7 real property losses occurring in certain locations in Israel during January and February 1991 were also applicable to claims for C8-Business losses located in that country. The Panel also considered external data demonstrating that the tourism sector in Israel had been one of those most adversely affected by the Gulf War, with the monthly flow of tourists diminishing from a pre-invasion high of 90,000 to 13,000 by February 1991.[285] Equally disruptive was the effect on local commerce, especially by January 1991. Because of the ongoing hostilities, commercial activities in Israel reportedly slumped to one-half or three-quarters of normal levels.[286]

353. The "C" Panel also considered the findings of the "E2" Panel in respect of losses in the tourism sector. As noted in paragraph 272 supra, the "E2" Panel determined that, because of the credible and serious threat of military action directed at Israel and the Scud missile attacks which constituted actual military operations, any losses suffered in Israel from 15 January 1991 to 2 March 1991 as a direct result of these military operations were compensable. The "E2" Panel found that claims for losses resulting from business disruption were compensable when they were associated with the invasion and occupation of Kuwait and, specifically, for decline in tourism-related businesses in Israel during the period of military operations or threat of military operations.[287]

354. Therefore, the Panel found that claimants for C8-Business losses in Israel could also be deemed to have demonstrated the requisite facts of ownership, loss and causal link to Iraq's invasion of Kuwait and that their C8-Business losses could accordingly be deemed to be compensable.

(d) Review of claims submitted by Pakistan for "other losses" ("CS-Other")

355. The Panel, in its sixth instalment, distinguished Pakistani claimants in its general decision not to consider claims for CS-Other losses as separately identifiable loss elements.[288] Based on its experience in the first instalment and other trends significant to this claimant group, the Panel determined that the losses should be recategorized as C8-Business losses, where appropriate.

(e) Processing methodology for the seventh instalment

356. The general considerations, observations and conclusions of the Panel in the first instalment continued to be relevant for the processing of the claims for C8-Business losses in the seventh instalment. In particular, these included the general business environment in Kuwait, the widespread use of the rent-a-permit system and the consequent general limitations on the ability of claimants to complete the claim form and provide primary documentary evidence. Nearly 90 per cent of the total claimant population for C8-Business losses came from eight submitting countries: Kuwait,

Jordan, India, [289] Yemen, Egypt, Pakistan, Syria and Iran. The remaining 10 per cent of claimants were distributed among 46 submitting countries and international organizations. Approximately one quarter of the claimants requested compensation for C8-Business loss amounts of US$20,000 or less and approximately 10 per cent claimed for amounts in excess of US$100,000. [290] Claimants were identified as belonging predominantly to two business sectors: (a) trade, both retail and wholesale; and (b) services, predominantly personal and household related, such as tailoring, laundry, etc.

(i) Determination of compensability

357. For the large claimant groups, sample reviews were undertaken. Samples were selected on the basis of standardized statistical methods and the sample size for each claimant group was designed to allow conclusions to be drawn about the particular C8-Business loss population represented. Kuwait, which alone accounted for approximately 4,000 claims for C8-Business losses, represented the most numerous claimant group and was the most homogeneous in terms of evidentiary submissions.

358. The sample reviews undertaken determined that claimants were universally able to provide evidence of the existence of the businesses, the eligible status of those businesses for consideration as C8-Business losses, [291] the claimants' ownership of the businesses and, finally, causation by the Iraqi invasion and occupation of Kuwait, in accordance with the Panel's criteria.

(ii) Evidence in support of valuation of C8-Business losses

359. The sample reviews also assessed the level and quality of the evidence submitted in support of the C8-Business losses claimed. The reviews assessed the level and quality of (a) "general" evidence, that is, any form of documentary evidence relating to the stated business loss that supplemented the information provided on the claim form (this, usually, included personal statements by the claimant and witnesses) and (b) primary evidence submitted in support of value. Examples of the latter included bills, purchase receipts, financial statements, invoices, inventory or insurance lists and documents of a similar nature. As a result of the sample reviews, the Panel concluded that, while a vast majority of claimants for C8-Business losses were able to provide probative evidence to indicate that they had suffered business losses, they were generally not able to provide independent documentary proof for the full amounts claimed or evidence relating directly to the value of their losses, as demonstrated in Table 1, *infra*.

Table 1. Level of evidence submitted in support of C8-Business losses for claimant groups sampled[292]

Sample groups	General evidence (%)	Primary evidence (%)
Kuwait	100	65
Jordan	90	34
Egypt	84	25
India and Bangladesh	70	18
Yemen and Syria	90	1

(iii) Establishment of external valuation benchmarks

360. The observations made by the Panel in the first instalment, concerning factors that impaired the ability of claimants to present evidence proving the extent of the business losses suffered, also proved to be the situation for C8-Business losses in the seventh instalment. Within this context, lack of primary documentation in support of valuation was not surprising. However, it presented the Panel with the problem of valuation of these losses in the context of a mass processing methodology.

361. For this purpose, therefore, the Panel considered that information about business activity in the Gulf region could be learned from external sources and requested that the secretariat undertake research in this connection. The secretariat's research ascertained that a reliable assessment of normal business activity prior to the invasion in the Gulf region could be construed from a study of the trends in real growth of business activity in Kuwait prior to the invasion. Given sufficient information about past performance, the estimates of business activity for the year in which the invasion occurred would capture the trend in growth or decline over previous years.

362. Because of the insufficiency of time series data, however, a trend for business activity could not be determined. Instead, an estimate of the turnover in the Kuwaiti sectors of (a) retail trade and (b) personal and household services for the year 1990 was based on the performance of those two sectors for the single year of 1989. This meant that the estimated level of revenue per sector for 1990 remained comparable to the pre-war level of 1989. Although the estimates are reliable, no account is taken for growth or decline in business activity. Thus, there is a zero per cent nominal growth from the year 1989 to 1990. Given a positive inflation rate and moderate growth, this could mean that the level of losses in the sectors concerned may actually have been underestimated.

363. The estimates were calculated by deducting the revenues generated per sector in 1990 from the revenues generated per sector in the normal course of business in 1989.[293] Notwithstanding the effect of business trends, the

difference in revenues was presumptively due to Iraq's invasion and occupation of Kuwait.

364. The Panel ascertained the distribution of claimant groups for C8-Business losses between the retail trade and services sectors as noted in Table 2, infra. Utilizing the external macro-economic estimates concerning business sectors in Kuwait, the Panel applied a series of external data benchmarks as shown in Table 3, infra, to assist with objective determination of the average losses sustained by businesses in Kuwait during the relevant period. [294]

Table 2. Sectoral distribution of claimants for C8-Business losses

	Kuwait	Jordan	Egypt	India/ Bangladesh
% claimants engaged in retail trade	49	51	28	44
% claimants engaged in personal and household services	51	49	72	46

Table 3. C8-Business losses per sector per submitting entity

Macro-economic benchmarks per group (%RT X KD 32,156 plus %PS X KD 8,100) [295]	Kuwait	Jordan	Egypt	India/ Bangladesh
	(amounts in nearest KD)			
	15,477	15,779	12,316	13,915
	(amounts in nearest US$)			
	53,555	54,597	42,615	48,148

365. The estimates of losses as expressed by these benchmarks represented an average loss per establishment, as derived from general external data and data provided by claimants viewed in the context of their submitting countries. As a consequence, the benchmarks are refined estimates that represent the particular characteristics of claimants from a specific submitting entity. Moreover, the estimates comprise a broad spectrum of establishments operating in Kuwait. The customized macro-economic

benchmarks therefore serve as objectively ascertained amounts against which to compare the amounts claimed by claimants for C8-Business losses.

366. Utilizing these benchmarks, calculated for each claimant group on the basis of the claimant group proportion in the sample, and considering the results of the evidentiary reviews of claims for C8-Business losses together with amounts claimed in the claimant populations, the Panel established the following methodology for resolving C8-Business losses.

(a) If the amount claimed for the business loss was less than or equal to US$20,000, the award was equal to the amount claimed;

(b) If the amount claimed was greater than US$20,000 but less than the benchmark amount determined for the group, the award was equal to the amount calculated as follows:

(i) US$20,000, increased by

(ii) the amount resulting from the multiplication of the amount claimed in excess of US$20,000 by the percentage of C8-Business loss-related general evidence provided by the claimant group;

(c) If the amount claimed was greater than the benchmark amount, then the award was equal to the amount calculated as follows:

(i) US$20,000, increased by

(ii) the amount resulting from the multiplication of an amount (equal to the amount claimed in excess of US$20,000 up to the benchmark amount) by the percentage of C8-Business loss-related general evidence for the group, increased by;

(iii) the amount resulting from the multiplication of an amount (equal to the amount in excess of the benchmark amount) by the percentage of C8-Business loss-related primary valuation evidence provided by the claimant group.

367. As an example of how this valuation methodology was to be implemented, the Panel considered three situations involving a hypothetical claimant from Egypt, as described in Table 4. The estimated benchmark amount for Egyptian claimants was US$42,615. Eighty-four per cent of Egyptian claimants submitted general evidence in support of C8-Business losses; however, only twenty-five per cent submitted primary valuation evidence in support of the loss amounts claimed.

Table 4. Hypothetical calculations for C8-Business losses

Methodology	Amount claimed	Amount recommended (nearest US$)
a. <US$20,000	US$16,000	US$16,000
b. >US$20,000<US$42,615	US$30,000	US$20,000 +
	(.84 X US$10,000) =	US$ 8,400
		US$28,400
c. >US$42,615	US$50,000	US$20,000 +
	(.84 X US$22,615) =	US$18,997 +
	(.25 X US$ 7,385) =	US$ 1,846
		US$40,843

(f) Recommendations for claims for C8-Business losses included in the seventh instalment

368. In the seventh instalment, the Panel considered 15,131 claims for C8-Business losses. The Panel recommended compensation in 14,976 claims and did not recommend compensation in 155 claims. The Panel also recommended that the Executive Secretary to arrange for the transfer of 103 claims to category "E" in accordance with article 32(3)of the Rules.

I. Loss type "C9": claims for other damages ("CS-OT")

369. As discussed more fully in the sixth instalment, the Panel took specific note of losses enumerated by the Governing Council in paragraph 14 of decision 1, as well as in decisions 3 and 4, and found that claims for CS-Other losses in category "C" did not represent separately identifiable loss elements for which compensation could be awarded in category "C". To the extent that these losses could be deemed to be compensable, it was only after they were recategorised to an appropriate, already existing loss category. [296]

V. CLAIMS INCLUDED IN THE SEVENTH INSTALMENT

370. The seventh instalment is composed of 71,069 category "C" claims that contain all loss elements for which compensation may be awarded in category "C". These include: (a) claims for departure-related losses ("C1-Money) and mental pain and anguish for being illegally detained or held hostage ("C1-MPA-ID"), or for being forced to hide ("C1-MPA-FH") on the "C1" page

of the claim form; (b) claims for personal injury ("C2-Money") and mental pain and anguish for serious personal injury ("C2-MPA") or for witnessing the intentional infliction of injury on a spouse, child or parent ("C2-MPA-W") on the "C2" page of the claim form; (c) claims for lost support from death of a spouse, child or parent ("C3-Support"), for medical, burial or other expenses ("C3-Other"), mental pain and anguish for the fact of death of a spouse, child or parent ("C3-MPA"), or for witnessing the intentional infliction of events leading to the death of a spouse, child or parent ("C3-MPA-W")on the "C3" page of the claim form; (d) claims for personal property losses ("C4-CPHO") or for the loss or theft or repairs to a motor vehicle ("C4-MV) on the "C4" page of the claim form; (e) claims for bank account losses in Kuwait or Iraq ("C5-BA") or for stock and securities losses ("C5-SOS") on the "C5" page of the claim form; claims for employment-related losses ("C6-Salary"), or lost support ("C6-Support") or mental pain and anguish arising from the deprivation of all economic resources so as to seriously threaten survival ("C6-MPA") on the "C6" page of the claim form; claims for real property losses ("C7-Repairs" and "C7-Other") on the "C7" page of the claim form; and claims for individual business losses ("C8-Business") on the "C8" page of the claim form.

371. Each loss element has required the elaboration of different compensability criteria and different assessment and valuation methodologies, most specifically designed for a mass claims processing programme that has required creative solutions to expedite resolution for compelling and complex issues involving multinational claimant groups. This seventh report, together with its predecessors, therefore represents the sum total of the jurisprudence of the Panel in respect of its resolution of approximately 420,000 individual claims for damages up to US$100,000.

372. During the processing of the seventh instalment, as in respect of previous instalments, the secretariat applied a special computer programme to perform cross-checks on combinations of available identifying information in order to exclude as much as possible cross-category multiple recovery between category "A" departure claims and claims for departure losses submitted on the "C1" page of the category "C" claim form. As with previous instalments, and after confirming that claimants who submitted individual or family claims for departure losses in category "A" had also submitted claims for departure losses in category "C", the Panel has instructed the secretariat to reduce the C1-Money departure awards in accordance with decision 24 of the Governing Council.

373. For the first time during the processing of category "C" claims, the secretariat applied a special computer programme to perform cross-checks on combinations of available identifying information in order to exclude as much as possible cross-category multiple recovery between (a) category "B" serious personal injury and claims for serious personal injury submitted on the "C2" page of the category "C" claim form, and (b) category "B" claims

for the death of a spouse, child or parent with identical claims submitted on the "C3" page of the category "C" claim form. After confirming that claimants who submitted individual or family claims for serious personal injury or death in category "B" had also submitted identical claims for C2-Money or C3-Money in category "C", the Panel has instructed the secretariat to reduce the C2-Money and C3-Money awards to avoid multiple recovery in respect of such losses.

VI. RECOMMENDATIONS

374. The Panel hereby presents the amounts recommended as compensation for 67,079 claims in the seventh instalment of category "C" claims. Totalling US$1,918,413,948.51, the recommended amounts for each Government and international organizations included in the seventh instalment are listed in the following table. Each Government and international organization will be provided with a confidential listing containing the individual recommendations made in respect of its claimants. The amounts recommended for compensation in the seventh instalment resolve all loss elements present in these claims. The Panel has not recommended compensation for 3,990 claims in the seventh instalment.

375. Those claims not recommended for payment relate to the following types of losses included in previous instalments: claims by Iraqi dual nationals without bona fide dual nationality; claims with no electronic loss information (global status "null"); [297] duplicate claims submitted by the same claimants for the same losses in category "C"; claims for C1-Money losses in which recommended amounts are equal to or lower than the amounts previously approved by the Governing Council for the same claimants in category "A", [298] C1-Money claims for departure that do not meet the jurisdictional period requirements as specified by the Panel; claims for C1-MPA-HT/ID for less than three days that do not meet the criteria for "imminent threat" specified by the Panel; claims for C4-MV losses that do not meet the proof of ownership criteria specified by the Panel; claims for C5 bank account losses in Kuwait; claims for C6-Salary losses that do not meet the jurisdictional requirements for location of loss as specified by the Panel; and C6-MPA losses for Egypt. [299] In addition, in this seventh instalment, claims not recommended for payment include any claims for any losses that have not met the Panel's criteria for compensation as detailed in the relevant discussions herein.

Table 5. Summary of seventh instalment recommendations

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Afghanistan	620	68	6,546,539.61
Algeria	16		695,540.82
Argentina	1		70,538.55
Australia	55	2	1,702,771.53
Austria	13	3	620,999.83
Bahrain	6	4	148,039.74
Bangladesh	2,019	11	37,554,395.74
Belgium	6	1	231,802.31
Benin	1		9,177.00
Bulgaria	8		125,605.86
Cameroon	1		8,766.44
Canada	250	8	11,857,638.70
Chad	1		22,563.35
China	4		124,658.70
Croatia	7		192,329.35
Cyprus	2	1	122,504.84
Czech Republic	8	1	145,166.19
Denmark	3		144,690.81
Egypt	13,598	1,446	228,574,373.13
Ethiopia	8		55,973.18
Finland	15		297,969.31
Federal Republic of Yugoslavia	5	2	148,194.04
France	171	5	6,534,238.54
Germany	54	6	2,220,488.11
Ghana	1		47,734.21
Greece	15		614,271.21
Hungary	9		284,036.35
India	8,970	386	185,773,000.03

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Iran, Islamic Republic of	731	40	26,975,073.39
Ireland	45		1,265,251.55
Israel	230	11	4,821,126.19
Italy	50	3	1,440,604.82
Japan	22		582,774.02
Jordan	8,464	445	279,894,629.49
Kenya	4		1[illegible],458.48
Korea, Republic of	35		2,365,481.86
Kuwait	18,516	166	784,934,659.15
Lebanon	548	6	15,514,902.72
Malaysia	1		22,453.23
Mauritius	13		163,472.65
Morocco	25		769,485.67
Nepal	2		14,495.18
Netherlands	24	4	814,269.57
New Zealand	7		237,824.47
Niger	1		34,733.08
Nigeria	23	1	271,732.67
Norway	1		22,092.68
Pakistan	3,997	973	72,220,012.40
Philippines	1,007	237	10,254,242.61
Poland	49	10	716,179.29
Portugal	2	2	63,496.91
Romania	1		31,894.07
Russian Federation	1		48,442.91
Saudi Arabia	2	4	60,431.66
Senegal	2		46,667.16
Seychelles	1		60,418.14
Sierra Leone	1		42,433.14
Singapore	4		191,724.05

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Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Slovakia	4	1	69,466.82
Slovenia	5		119,825.39
Somalia	64	9	1,180,810.34
South Africa	1		31,786.29
Spain	5		147,896.97
Sri Lanka	964	17	5,187,819.35
Sudan	626	3	14,740,586.11
Sweden	20	1	935,577.80
Switzerland	8		207,359.65
Syria	1,970	20	56,697,373.20
Tanzania	2		23,909.76
Thailand	46		912,347.94
Tunisia	327	5	8,305,384.84
Turkey	84	2	2,525,646.17
United Arab Emirates	0	7	0.00
United Kingdom	771	20	28,429,392.05
United States of America	428	5	15,758,081.21
Vietnam	3		33,328.47
Yemen	1,588	13	79,127,855.58
UNDP Jerusalem	125	4	4,324,195.44
UNDP Kuwait	27	11	891,369.68
UNDP Washington	28	4	1,130,475.75
UNDP Yemen	38	3	681,255.41
UNHCR Bulgaria	10	1	285,424.54
UNHCR Canada	23	7	1,121,785.59
UNHCR Geneva	1		16,551.20
UNRWA Gaza	235	11	6,757,977.27
Total	67,079	3,990	1,918,413,948.51

376. The Panel is satisfied that the secretariat has used reasonable and practical means to detect the existence of duplicate claims. However, given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by all Governments and international organizations receiving lists of individual claims in order to prevent instances of overpayment to their claimants.

377. With reference to the considerations on the subject of interest expressed in the First Report,[300] the Panel recommends that interest be awarded on the claims included in this seventh instalment of category "C" claims as of 2 August 1990.[301]

378. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 30 March 1999

(Signed) Mr. L. Yves Fortier, Q.C.
Chairman

(Signed) Mr. Sergei N. Lebedev
Commissioner

(Signed) Mr. Philip K. A. Amoah
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ See the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its annexes (the "First Report"), S/AC.26/1994/3, the "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its addendum (the "Second Report"), S/AC.26/1996/1 and S/AC.26/1996/1/R.3/Add.1/Rev.1, the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims) (the "Third Report"), S/AC.26/1996/2, the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" (the "Fourth Report"), S/AC.26/1996/4, the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fifth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims) (the "Fifth Report"), S/AC.26/1997/1, and the "Report and Recommendations Made by the Panel of Commissioners Concerning the Sixth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims) (the "Sixth Report"), S/AC.26/1998/6.

3/ S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998).

4/ S/AC.26/1991/1.

5/ "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" claims)" ("First 'B' Report"), S/AC.26/1994/1, at pp. 12-13.

6/ First Report, pp. 12-13.

7/ S/AC.26/1992/12. This decision extends filing deadlines for certain types of claims, inter alia, for claims of individuals for losses resulting from public health and safety risks that occur after or within one year prior to the expiration of the established filing deadlines.

8/ See First Report, pp. 12-13 and accompanying notes.

9/ Ibid., p. 77.

10/ See Sixth Report, at paras. 21-27. This decision was taken after reviews confirmed that many expatriate nationals who resided in Iraq or Kuwait and who departed prior to the jurisdictional period had left during the traditional vacation months of June and July 1990 and were prevented from returning because of Iraq's invasion and occupation of Kuwait.

11/ The presence of one or the other of these identification numbers in the relevant electronic field establishes the fact of residence in Iraq or Kuwait prior to the 1990 invasion and occupation.

12/ First Report, p. 13.

13/ "Report and Recommendations Made by the Panel of Commissioners Concerning the Sixth Instalment of Claims for Departure from Iraq or Kuwait ("Category 'A' Claims")", S/AC.26/1996/3, para. 30.

14/ Sixth Report, paras. 14-15. Both Panels were mindful of two overriding considerations: (a) that the claims in connection with which this issue arose were "urgent claims" for the compensation of which "expedited procedures" had been prescribed by the Governing Council in decision 1; and (b) that the issue to be determined was whether the second nationality was acquired bona fide in the context of eligibility to claim compensation before the Commission.

15/ Ibid., para. 15.

16/ Decision 11 specifies that three conditions must be met for the loss or injury to be compensable: (a) the compensation is awarded in accordance with the general criteria already adopted; and (b) the claimants were prisoners of war as a consequence of their involvement in Coalition military operations against Iraq in response to its unlawful invasion and occupation of Kuwait; and (c) the loss or injury resulted from mistreatment in violation of international humanitarian law (including the Geneva Convention of 1949).

17/ See First Report, pp. 15-16.

18/ First "B" Report, pp. 17-19.

19/ First Report, pp. 17-18. It follows from this definition of "family" that claims put forward by other relatives such as brothers or sisters, grandchildren, grandparents, nieces, nephews or uncles and aunts of the deceased or injured person would be excluded. First Report, p.18, note 47.

20/ Ibid., p. 18.

21/ Decision 1, at paragraphs 10-13, specifically provided for the payment of fixed amounts to persons who, as a result of Iraq's unlawful invasion and occupation of Kuwait, (a) departed from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991; (b) suffered serious personal injury; or (c) whose spouse, child or parent died. Claims in category "A" covered departure losses while claims in category "B" covered serious personal injury and death losses. Both categories "A" and "B" provided for fixed amounts to be paid in "family" situations. Category "C" does not.

22/ Some of these claims were separated from each other during the secretariat's claims registration and cover sheeting project when two separately completed claim forms were found to exist in the same file.

23/ This intention was generally evidenced by the completion of separate claim forms for each individual, by the submission of more than one completed claimant identification page in the name of a different person or persons or by the completion of both sides of the claimant identification page in different names, along with the provision of identification information for each claimant.

24/ Separation of "multiple" claims occurred when such claims were identified during the registration and organization of claims data phases. Claimed amounts were adjusted accordingly at that time. The claims discussed here were identified after all off-site registration activities had concluded. The newly created category "C" claims were included among those in the secretariat's on-site data entry project that is noted in section II infra.

25/ The circumstances considered to be directly linked to Iraq's invasion and occupation of Kuwait and to have caused such losses include: (a) military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991; (b) departure from or inability to leave Iraq or Kuwait or a decision not to return during that period; (c) actions by official, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation; (d) the breakdown of civil order in Kuwait or Iraq during that period; or (e) hostage-taking or other illegal detention.

26/ Decision 15, para. 3.

27/ First Report p.21 and accompanying notes.

28/ First Report, p. 21.

29/ See generally First Report, pp. 23-29, for a detailed discussion of the evidentiary items noted.

30/ See generally First Report, pp. 29-33, for a detailed discussion of the rationale for selecting the currency exchange rate noted.

31/ See generally First Report, pp. 39-48, for a detailed discussion of the rationale for the Panel's decision to use mass claims processing methods to resolve claims in category "C".

32/ The claims included in the first instalment were the first claims received by the Commission. Therefore, they did not include the submissions of all concerned Governments and international organizations, nor did they reflect the full experience developed by those entities in preparing their claims, nor were they sufficient in number to raise all generally applicable issues for each loss element. See Second Report, para. 10.

33/ First Report, pp. 40, 48, 138 and 181.

34/ See generally Second Report, paras. 8-23, describing the rationale, organization and preparation of claims for electronic processing.

35/ First Report, pp. 47-48.

36/ Sixth Report, para. 8.

37/ Two additional claims, submitted in accordance with decision 12, were incorporated into the category "C" claims database in February 1999, in time to be included in the electronic processing cycle for the seventh instalment.

38/ The First Report addresses the background of these problems (see pp.42-43). While certain claimants understood the claim form, or received adequate assistance in the quantification and presentation of their damages, for the vast majority of individuals, the completion of the claim form was a highly unusual and difficult exercise. In addition, not all claimants were able to benefit from the guidance of a well-organized national claims programme.

39/ In the Second Report, the Panel listed the far-reaching and varied difficulties associated with the category "C" claims received by the Commission as follows: "duplicate claim forms filed by the same claimant; multiple claims filed on behalf of or with other individuals; claims that were later supplemented or substituted in whole or in part; formal deficiencies under the Rules; identical or similar losses claimed in other claims categories; misunderstanding of jurisdictionally relevant dates; incorrect calculations; unclear currencies; different numbering conventions; the use of wrong claim form pages; overlapping or double-claimed losses within a claim; implied or express inclusion of individual amounts for lump sum categories of mental pain and anguish; discrepancies between originals and copies of claim forms; contradictions between two completed sides of the form; questions of translation; claims exceeding US$100,000; lack of family-related information; inadvertent switches of evidentiary attachments between claims; ambiguity as to a claimant's identity; illegible information; claim forms in a tattered condition; ambiguous modifications to the completed claim forms; inconsistencies between specific amounts and totals; and the partial completion of the claim form." (para. 20).

40/ First Report, p. 43 and Second Report, para. 21.

41/ First Report, pp. 51-53.

42/ Ibid., pp. 52-53.

43/ The Panel took note that this information was specifically verifiable through the Kuwait Public Authority for Civil Information database. First Report, p. 53.

44/ Ibid.; Second Report, paras. 19-20.

45/ Second Report, para. 22.

46/ The Panel specifically referred to this use of the computer for matching exercises in the first instalment. First Report, pp. 71-72. Additionally, claims have been identified as duplicates during manual review exercises. Such claims had not previously been identified by the computer matching programme because of inconsistencies in identifier information. After confirmation that the claims were in fact submitted by the same person for the same losses, the identifier information has been amended so as to render it consistent. Thus, such claims are currently identifiable by electronic means.

47/ See the Sixth Report, at paras. 98-102 and accompanying notes, for a description of the specific selection policy for intra-category duplicate category "C" claims and the rationale for that policy.

48/ Sixth Report, note 121.

49/ This number refers to unreported and unprocessed claims. Certain claims had been reported in previous instalment reports to Governments and international organizations before the corresponding duplicate claims were identified. In such cases, failing notice to the contrary from the Government or organization to which the claims were reported, the Panel determined that the reported claims were de facto valid and that corresponding unprocessed duplicates would be rejected.

50/ Each notification forwarded a confidential list of the specific matched claim numbers, claimant names and identifier information as such related to each Government or organization concerned and requested that the recipients respond in writing to the secretariat by no later than 30 September 1998.

51/ The Panel considered that this action was in accordance with decision 5 and article 5.2 of the Rules, which together provide for an appropriate person, authority or body appointed by the Governing Council to submit claims on behalf of persons who are not in a position to have their claim submitted by a Government. All other things being equal, persons whose

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claims were also submitted by a Government were _prima facie_ in a position to have their claims submitted by a Government.

52/ In the Panel's selection policy, the presumption was that the higher lot number or the higher claim number within the same lot indicated the version filed later, or latest, in time.

53/ S/AC.26/Dec.21 (1994).

54/ See, e.g., First Report, pp. 54-55 and 71-72; Second Report, para. 54; Third Report, para. 10; Fourth Report, para. 10; Fifth Report, para.18; and Sixth Report, para. 119.

55/ First Report, p. 55.

56/ S/AC.26/1991/7/Rev.1.

57/ Ibid., para. 8; Rules, art. 35(3).

58/ S/AC.26/1991/7/Rev.1, para. 3.

59/ See generally Sixth Report, paras. 16-20 (discussing the treatment of amounts claimed in excess of US$100,000).

60/ For a full discussion of issues related to outlier claims see paras. 193-198, _infra_

61/ Addendum to the Second Report, S/AC.26/1996/R.3/Add.1/Rev.1 ("Second Report Addendum"), annex I, para. 10.

62/ First Report, pp. 192-193; and Second Report, paras. 44-51.

63/ S/AC.26.1991/7/Rev.1, paras. 16-29 and paras. 30-42 respectively.

64/ First Report, p. 56.

65/ S/AC.26/1992/13.

66/ First Report, pp. 57-58.

67/ See generally, Sixth Report, paras. 84-88 and accompanying notes, providing the Panel's considerations and rationale.

68/ The Panel arrived at the figure of US$9,000 after statistical analysis of relevant claims data concluded that the reducing effects of the fast-track methodologies in category "C" effectively worked to cancel the amount of declared compensation received so as to negate duplicate recovery up to that amount. Moreover, those claimants who declared large sums as compensation received from non-Fund sources were predominately nationals of OECD countries.

69/ First Report, p. 68. See generally pp. 59-81 for the Panel's considerations, findings and conclusions in respect of C1-Money losses in the first instalment.

70/ First Report, pp. 78-79. The Panel provided several examples both of costs it considered to be temporary and extraordinary in nature and of costs it did not consider to be temporary and extraordinary.

71/ The Panel noted that approximately 93 per cent of C1-Money claimants submitted some form of evidence in support of their claim in addition to the claim form. However, while this evidence demonstrated the fact of loss, it did not provide objective support for amounts sought in compensation.

72/ First Report, pp. 79-80. In its first instalment, the Panel also manually reviewed claims with C1-Money losses where the amounts claimed were higher than the average and compensated such claims to the extent that the amounts were temporary and extraordinary in nature and could also be supported by documentary proof.

73/ Second Report Addendum, annex I, "Technical Description", paras. 7-9. The Panel also mandated the manual review of claims for C1-Money losses that contained "outlier" amounts claimed (amounts that were significantly higher or lower than the average amounts); however, once the amounts were verified as not being the result of data error, the model was applied to all C1-Money losses.

74/ See Sixth Report, paras. 21-27 and accompanying notes, for a detailed discussion of the issues and outcome.

75/ Sixth Report, para. 27.

76/ First Report, pp. 82-96.

77/ Ibid., p. 92.

78/ Sixth Report, paras. 38-40.

79/ First Report, p. 90. For a detailed discussion of the first instalment considerations, see First Report, pp. 90-91.

80/ Ibid., p. 91.

81/ Ibid. For example, the Panel considered that the number of days stated was routinely compared to the stated date of departure from Iraq or Kuwait and, where necessary, amended to conform. See note 167.

82/ Second Report, para. 32. Approximately 94 per cent of claims submitted by nationals of OECD countries for hostage-taking or illegal detention for more than three days satisfied the Panel's criteria. These results are also consistent with United Nations reports regarding incidents and patterns of hostage-taking and detention during the invasion and occupation of Kuwait. See note 32.

83/ Fifth Report, para. 11. The sampling results confirmed that, while the number of days stated in the claim form was reliable, some claimants had actually understated the number of days supported by the evidence attached to the claim forms. See note 18.

84/ Sixth Report, para. 42. The Kuwaiti claims programme submitted some claims on behalf of claimants from countries other than Kuwait, who generally remained in Kuwait throughout the invasion period. In respect of claims for C1-MPA, these individuals had experiences similar to those of Kuwaiti nationals. The group included Somali and Ethiopian nationals and nationals of other countries who generally had family ties to Kuwaiti nationals, e.g., spouses. Ibid., notes 53-54.

85/ Ibid., para. 43. These claimants were detained in Kuwait after the cessation of hostilities and not as a direct result of acts or actions of Iraq. Where indicated at all, departure dates were generally after 2 March 1991.

86/ Sampling was used to determine trends for submitting countries having more than 1,000 claims with C1-MPA losses for hostage-taking or illegal detention for more than three days. Smaller submissions or those coming from the same geographic locations were grouped to form one sample population. Randomly chosen claims were reviewed in order to ascertain whether sufficient evidentiary support existed, to evaluate the level of that support and to determine whether or not the criteria established by the Panel for this loss element in the First Report have been met.

87/ This percentage is calculated by taking the average percentage of all percentages of claims submitted by non-OECD nationals that have been determined to have met the criteria for C1-MPA hostage-taking or illegal detention for more than three days, weighted by the relative size of the populations included. Sixth Report, note 57.

88/ First Report, pp. 92-95. The eight "forced hiding conditions" are specified in the First Report at pages 93-95.

89/ The determination was based on the results of sampling projects that confirmed that all claims by OECD nationals and 99.5 per cent of claims submitted by Kuwait satisfied the Panel's criteria. (Second Report, note 32). Kuwaiti nationals and nationals of OECD countries met at least one of the eight "forced hiding conditions". They were known to have been specifically targeted for hostage-taking or illegal detention and were thus generally forced to hide. First Report, pp. 93-95; and Second Report, para. 31.

90/ See generally, Second Report, paras. 25-32. For claimants from countries other than Kuwait or OECD countries, submitting entities with 1,000 or more claims for C1-MPA for forced hiding represented distinct sampling groups, while submitting entities with fewer than 1,000 claims were geographically grouped to form one sampling population. In this way, the sample groups attempted to maximize homogeneous claimant groups who could be expected to share evidentiary and other relevant characteristics.

91/ Together with those Kuwaiti nationals who were unable to leave their country, Somali and Ethiopian nationals generally remained in Kuwait throughout the invasion period and, with respect to C1-MPA claims, had experiences similar to those of Kuwaiti nationals, citing inter alia, aerial bombings, killings by Iraqis and the danger from bullets going astray as their reasons for going into hiding. First Report, pp. 93-95; Second Report, para. 31.

92/ See generally Sixth Report, paras. 46-52, summarizing the Panel's considerations and decisions.

93/ This percentage is calculated by taking the average percentage of all percentages of claims determined to have met the C1-MPA forced hiding criteria, weighted by the relative sizes of the populations included.

94/ For claims for C1-MPA for forced hiding or for hostage-taking or illegal detention for more than three days, the number of days stated in excess of three (3) is never reduced to less than four (4).

95/ Sixth Report, para. 52.

96/ "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category 'B' Claims)" ("First 'B' Report"), S/AC.26/1994/1, p. 22. The secretariat proposed to Governments that they should withdraw such claims and resubmit them under categories "C" or "D". A number of Governments modified their submissions accordingly.

97/ S/AC.26/Dec.25 (1994).

98/ For a detailed list of the reports that the Panel took into account during its deliberations on personal injury-related issues, see First Report, p. 98, note 172.

99/ See generally First "B" Report, pp. 12-20 and 23, for a detailed discussion of the "B" Panel's conclusions on each of these topics.

100/ Decision 3 defines "serious personal injury" as (a) dismemberment; (b) permanent or temporary significant disfigurement, such as a substantial change to one's outward appearance; (c) permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system; (d) any injury which, if left untreated, is unlikely to result in the full recovery of the injured body area, or is likely to prolong such full recovery.

101/ Decision 1, at paragraph 14, does not specify "serious" personal injuries only and provides generally for the payment of medical expenses. "Serious personal injury", as defined in decision 3, is the requirement for injury compensation in category "B". It is also the prerequisite for an award of C1-MPA. The Panel took note of this distinction in the first instalment. First Report, p. 104.

102/ For a detailed discussion of the Panel's rationale and considerations in respect of C2 personal injury and MPA losses, see First Report, pp. 97-114.

103/ However, as noted in the discussion of C1-MPA, paras. 102-103 and 106-108 supra, results of reviews for this instalment were also inconclusive in respect of claimants who were not nationals of Kuwait or of OECD countries. Thus, the mere fact of indicating an injury category on the C2 loss page, especially a serious personal injury category, without providing the date of injury, was not considered by the Panel to be adequate proof of injury for any claimant.

104/ See First Report, pp. 98-102, detailing the principal causes of injury.

105/ In connection with this last point, the Panel relied extensively, as did the "B" Panel, on "The Traumatic Events and Mental Health Consequences Resulting from Iraqi Invasion and Occupation of Kuwait" prepared by the Al-Reggae Specialized Center for Treatment of War Victims in Kuwait, dated 1 December 1993 (the "Al-Reggae Report"), which documented the serious effect that the invasion and occupation had on the mental health of the population.

106/ S/AC.26/1991/1, para. 18.

107/ First Report, pp. 108-111.

108/ Ibid., pp. 110-111.

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109/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Claims for Serious Personal Injury or Death (Category "B" Claims)", S/AC.26/1994/4 ("Second 'B' Report"); "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the Second Instalment of Claims for Serious Personal Injury or Death (Category "B" Claims)", S/AC.26/1995/1 ("Third 'B' Report"); "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Claims for Serious Personal Injury or Death (Category "B" Claims)", S/AC.26/1995/6 ("Fourth 'B' Report").

110/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)", S/AC.26/1998/11 ("Third 'D' Report"), paras. 41-76.

111/ Second "B" Report, para. 16.

112/ Second "B" Report, para. 18. The "B" Panel had already held, in an analogous situation in its First "B" Report that, when the deceased had not claimed for a serious personal injury prior to his or her death, the "executor cannot claim for the payment of an obligation that, at the time of the death of the injured person, had not yet arisen". First "B" Report, p. 20. However, as will be discussed in connection with death claims infra, a C2 claimant who has an eligible family relationship may be eligible to have the personal injury claim recategorized as a "C3" loss for witnessing of events leading to the death of a family member.

113/ First "B" Report, p. 21.

114/ First "B" Report, pp. 21-23; Second "B" Report, para. 19; Third "B" Report, para. 14; Fourth "B" Report, para. 19. In cases where a category "C" claim matching a transferred "B" claim already existed and that claim also had a C2 personal injury claim, but with no additional documentation or explanation of circumstances, the C2 personal injury claim was recategorized to the appropriate C1-MPA category, if a C1-MPA claim did not already exist. If a C1-MPA claim already existed, the C2 loss was cancelled, so long as the claimant had neither claimed for nor presented evidence in support of medical expenses. See Sixth Report, paras. 95-97.

115/ First "B" Report, p. 22.

116/ Second "B" Report, para. 31.

117/ Ibid., para. 32.

118/ Ibid., paras. 20-24.

119/ Ibid. In connection with vehicular accidents which occurred while individuals were fleeing Iraq or Kuwait to escape the invasion and occupation, the "B" Panel took account of the particular circumstances of each case such as the hardship of travel, the parties involved, the date, location and immediate cause of the accident in its recommendation of compensation. Second "B" Report, para. 24. Therefore, where the "B" Panel had already decided the issues relating to a given vehicular accident, the Panel considered the "B" Panel's determination to be dispositive. For those claims for C2 personal injuries that were caused by vehicular accidents, but for which there was no matching "B" claim, the Panel considered the timing of the accident to be the most significant indicator of the causal link to the Iraqi invasion and occupation of Kuwait.

120/ Second "B" Report, paras. 33-35.

121/ Second "B" Report, paras. 28-30.

122/ First Report, pp. 107-108.

123/ In 1998, for the first time, the Panel was able to view the full population of claimants for C2 personal injury losses, the number of losses, the breakdown of injuries per age groups, the age groups, genders, nationalities and submitting entities and compare this information with external information on departure patterns and injuries suffered.

124/ This was most often the case when a claimant had established an actual valid hostage-taking situation on the C1 page, in contrast to a presumptive situation, and had also alleged "torture" on the C2 page, but had not provided specific information in respect of the C2 situation.

125/ This is what most often occurred with such losses. In any case, the Panel did not deem them to be compensable C2 losses.

126/ Certain groups of claimants who routinely alleged "torture" without specifying dates or details of physical torture actually meant and sometimes specified "mental" torture.

127/ The manual reviews determined that claimants viewed incidents of indecent exposure on a par with sexual assault.

128/ The Panel approved C2-MPA awards of US$2,500 for each incident described. See discussion of C2-MPA, paras. 135-140 infra.

129/ The secretariat requested the expertise of the same firm of international actuaries that had already provided advice to the "D" Panel in respect of the valuation of its D3 support losses.

130/ "Implementation of U.N. Resolution No. 692 of 20 May 1991: valuation and compensation of outstanding C.2 personal injury claims. Analysis and recommendations", prepared for the Commission by Watson Wyatt S.A., in collaboration with Dr. Giovanni Tamburi and Dr. Christian Richner, April 1998.

131/ The ratio is composed of three variables: (a) F1 equals the age multiplier (if the claimant is age 35 or younger, F1 is equal to 1.2; if the claimant is over 35 years of age, F1 is equal to 1.0); (b) F2 equals the submitting entity multiplier (if the submitting entity is Kuwait, then F2 is equal to 1.0; if the submitting entity is an OECD country, then F2 is equal to 1.2; if the submitting entity is neither Kuwait, nor an OECD country, the F2 is equal to 1.4); and (c) F3 equals the gender and marital status multiplier (if the gender is male or not indicated, then F3 is equal to 1.1; if the gender is female and the submitting entity is not Kuwait and not an OECD country, and the marital status is single or divorced, then F3 is equal to 1.2; if the claimant is female and either (i) married or status not indicated, or (ii) from Kuwait or an OECD country, then F3 is equal to 1.0.

132/ There are two age groups only: Group I includes injured persons up to 35 years of age; and Group II includes injured persons over 35 years of age.

133/ Decision 8 specifies ceilings as follows: (a) US$15,000 for dismemberment, permanent significant disfigurement, or permanent limitation or loss of use of a body organ, member, function or system; (b) US$5,000

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for a temporary significant disfigurement or temporary loss or limitation of use of a body organ, member, function or system, as well as for each incident of sexual assault, aggravated assault, or torture; and (c) US$2,500 for witnessing the intentional infliction of a serious personal injury on the claimant's spouse, child or parent, with a ceiling of US$5,000 per family unit.

134/ First Report, p. 112.

135/ "Report of the Panel of Experts Appointed to Assist the United Nations Compensation Commission in Matters Concerning Compensation for Mental Pain and Anguish" dated 14 March 1994 ("the MPA Report"). The MPA Report was included as annex VI to the First Report.

136/ First Report, pp. 112-113.

137/ Ibid., pp. 113-114.

138/ These profiles included information (a) about the claimant (nationality, sex, marital status and age); (b) about the circumstances (situations of illegal detention, hostage-taking, or forced hiding and, if so, the number of days in each situation); and (c) about the injury (injury category, permanent or temporary nature of the injury and the description provided by the claimant in the claim form).

139/ Examples of such contradictory evidence were: dates of departure from Iraq or Kuwait prior to 2 August 1990 or dates of injury indicated as occurring after 2 March 1991.

140/ For detailed criteria and conclusions reached by the Panel, see First Report, pp. 115-128.

141/ Ibid., p. 122.

142/ Ibid., pp. 116-119.

143/ Ibid., p. 98, note 172, p. 116, note 221, and p.117, note 244.

144/ Ibid., p. 124.

145/ The Panel rejected a number of accident-related death claims in the first instalment after consideration of the parties involved, and the date, location and immediate cause of the accident. It also received advice from a medical expert where necessary in determining causation for deaths allegedly caused by lack of medical treatment. First Report, pp. 124-125.

146/ See notes 96, 109 supra.

147/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)", S/AC.26/1998/1, ("First 'D' Report"), paras. 171-244.

148/ Second "B" Report, para. 34.

149/ Ibid.

150/ Ibid., para. 36.

151/ Third "B" Report, para. 5.

152/ In 1998, for the first time, the Panel was able to view the full population of claimants for C3 death losses, the number of losses, the breakdown of losses across age groups, genders, nationalities and submitting entities and compare this information with external information on departure patterns and deaths suffered.

153/ Both types of claims were most generally submitted by the surviving spouse of the deceased, but in the name of the deceased person.

154/ Both loss elements are considered generally as C3-Money losses.

155/ First "D" Report, paras. 208-226.

156/ Ibid., para. 208.

157/ The "C3" page of the paper claim form requests claimants to provide the figure for "earnings of deceased in 12 months prior to 2 Aug. 1990", generally eliciting responses providing annual earnings. The relevant field in the electronic form contains the figure for monthly earnings.

158/ These principles included:

(a) had death not occurred, the deceased would have had an expectation of life equal to that of a person of the same sex, age and nationality, as indicated in the most appropriate available life tables;

(b) had death not occurred, the deceased would have continued to earn and to provide support to his eligible dependents during the deceased's life span;

(c) the level of earnings of the deceased would have decreased after reaching normal pensionable age;

(d) compensation should be assessed on the basis of the family unit composition at the time of death, disregarding its further modification;

(e) compensation should be paid on the basis of the deceased's earnings at the time of death.

See First "D" Report, para. 212, and accompanying notes.

159/ See First "D" Report, at paras. 213-222 describing the actions and recommendations of the actuaries.

160/ The original groups are expressed in the First "D" Report, at note 85. The Panel's C3 methodology expands these groups as follows, to take into account the more numerous submitting entities represented in category "C":

Group 1 - UNDP Kuwait, UNHCR Canada, UNHCR Bulgaria, UNHCR Geneva, UNDP Washington, UNRWA Vienna, United Arab Emirates, Bahrain, Algeria, Egypt, Kuwait, Jordan, Lebanon, Morocco, UNDP Jerusalem, Syria, Sudan, Tunisia;

Group 2 - Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States and Israel;

Group 3 - All submitting countries not included in Groups 1 and 2.

161/ First "D" Report, paras. 215-216.

162/ The "D" Panel adopted the suggestion of the actuaries that a suitable indicator of safe medium and long-term return was the yield offered by Government treasury bills. First "D" Report, note 86.

163/ "In considering the possible fluctuations in inflation, the actuaries looked at monetary stability which is measured by the International Monetary Fund which compares national currencies to a benchmark represented by the value of a unit of Special Drawing Rights (SDR). As an alternative measure of monetary stability and as a direct indicator of inflation, the actuaries considered the Consumer Price Index for each of the currencies in the D3 claims population." First "D" Report, note 87.

164/ First "D" Report, para. 217

165/ Ibid., paras. 218-219.

166/ This could mean that residual amounts would be apportioned only among claimants in category "D".

167/ Because claims in category "D" were not subject to the US$100,000 limitation on recovery, often "family" submissions were made. Eligible dependents were often listed separately within a single claim number. For the C3 compensation formula, apportionment is made in accordance with the unique claim number that has been assigned to the claim. One claim number equals one dependent.

168/ First "D" Report, para. 211. The United States-Germany Mixed Claims Commission awarded compensation where the deceased was a housewife in the following cases: Arthur Courtland Luck; Frances Lapham Field and Terence Joseph Condon. See Marjorie M. Whiteman, Damages in International Law, (United States Government Printing Office, Washington, 1937), vol. I, pp. 693-694.

169/ See First "D" Report, para. 223, for the Panel's considerations and the chart of lump sum amounts recommended.

170/ The presumptions generally consider that children under 21 would not be earning an income and differentiate between spouses who had dependent children and those who did not. There is also a differential in respect of whether the deceased person was younger or older than 55, the presumed age of retirement. First "D" Report, para. 223.

171/ Persons may have presented claims as part of "family" submissions in category "D" and were thus not discovered in their capacity as individual claimants at the time of apportionment of amounts in category "C". Verification for all such persons included within individual category "C" claims was not feasible in view of the expedited nature of the category.

172/ First Report, p. 125.

173/ In respect of C2 and C3-related expenses, it was observed that claimants in category "C" often claimed amounts that were related to non-pecuniary losses, i.e., MPA, rather than to actual expenditures.

174/ MPA Report, First Report, annex VI, pp. 263-264.

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175/ These profiles included information (a) about the claimant (nationality, sex, marital status, and age); (b) about the decedent (relationship to the claimant and age at the time of death; and (c) about the death (when the death occurred and what expenses were being claimed).

176/ These sources are listed in the First Report, note 257.

177/ See generally the Panel's considerations in the First Report, pp. 129-138.

178/ It is in part for this reason that personal property losses, together with departure losses and losses related to salaries and wages, have been considered to be "fast-track" loss elements. The Panel introduced the "fast-track" approach in the second instalment in an attempt to expedite recovery of compensation to the largest number of claimants in category "C".

179/ First Report, p. 138.

180/ For a detailed description of the Panel's considerations and practice in the first instalment, see First Report, pp. 138-147.

181/ The Panel found this attributable to, inter alia: (a) the inherent difficulty of documenting items purchased over a number of years in several locations; (b) the cash-based economies of Kuwait and Iraq; and (c) the general circumstances surrounding the claimants' losses that were caused by the Iraqi invasion and occupation of Kuwait. First Report, pp. 140-142.

182/ See generally First Report, pp. 142-144.

183/ Second Report, paras. 33-34.

184/ Second Report Addendum, annex I, "Expert Opinion of Professor Y. Balasko and Professor G. Ritschard".

185/ Ibid. "Technical Description", para. 9.

186/ Ibid., paras. 7-29.

187/ Second Report, para. 39.

188/ In the context of the C1-Money or the C4-CPHO models, a claim is considered to contain an "outlier" amount claimed if an amount claimed for any one of the C1-Money losses (transportation, food, lodging, relocation costs, other) or C4-CPHO losses (clothing, personal effects, household furniture, other) differs significantly from the amounts claimed for these items by claimants from the same submitting entity. Second Report Addendum, annex I, "Technical Description", para. 8.

189/ In this context, a claim is considered to have an "outlier" amount recommended if the application of either model results in an award of 35 per cent or less of the amount claimed by the claimant. Generally, 95 per cent of claimants in category "C" recovered at least 36 per cent or more of the amounts they claimed for C1-Money and/or C4-CPHO losses.

190/ Fifth Report, para. 16.

191/ Sixth Report, paras. 103-111.

192/ Approximately eight of ten claimants received the amounts claimed.

193/ Sixth Report, para. 110. Generally, fewer than 15 per cent of C4-CPHO claimants were able to provide such primary evidence. None of the claims reviewed had primary evidence (receipts, invoices, bills and similar documentation) to support the inordinately high amounts claimed. This was so even where the primary evidence could be considered fully probative of value and traced to all items claimed for.

194/ There are three relevant loss fields for C4-CPHO losses. The fields for "personal effects" and "household furnishings" are considered as one field for purposes of application of the model. The other two fields are "clothing" and "other".

195/ In arriving at this decision, the Panel considered, *inter alia*, the initiative by the Governing Council in September 1998 recommending that such action be taken.

196/ For a detailed discussion of the Panel's considerations and the methodology used for motor vehicle claims in the first instalment, see generally First Report, pp. 148-158.

197/ First Report, pp. 153-154.

198/ These countries include Jordan, Saudi Arabia, Turkey, Bahrain, Iran, Syria, Turkey, the United Arab Emirates and Qatar.

199/ First Report, pp. 154-155.

200/ The Panel selected this date as uniform because the actual loss or loss of use of most automobiles took place on or around 2 August 1990.

201/ The values were derived from retail market values provided to PAAC by several major lenders and dealers in the Kuwaiti automobile market. Where market data was not available, PAAC used a statistical analysis to extrapolate results from the available data. For vehicles for which there was no Kuwait-based market data, PAAC's approach was to derive the value, with an appropriate adjustment, from the National Association of Automobile Dealers ("NADA") Used Car Values Manual, which is a standard reference for used car prices in the United States. First Report, p. 156 and note 278.

202/ First Report, pp. 156-157.

203/ Ibid., pp. 157-158.

204/ Second Report, paras. 40-41.

205/ Fifth Report, paras. 12-13. Thus, the Panel determined that for Kuwaiti nationals the recommended amount of compensation should be the lower of the amount of loss claimed for the motor vehicle on the "C4" page of the claim form or the original cost of the vehicle as stated on the "C4" page of the claim form.

206/ This was so because most claimants in the sample had provided the missing information, either on the claim form itself or in the attached documentation. Most claimants would therefore have met the electronic proof of ownership criteria if a manual review of all claims were feasible. The Panel determined that a manual review was not feasible. Sixth Report, paras. 55 and 57.

207/ The total number of C4-MV loss pages with no electronic proof of ownership that were included in the electronic survey was 24,118. Of these, 17,009 had amounts of loss claimed that equaled the original cost or value. Sixth Report, note 69.

208/ Sixth Report, para. 58.

209/ See generally Sixth Report, paras. 59-63. Logistic regression is a well-established statistical tool which has been widely used in the last thirty years. It is standard practice in statistics to modify classic regression methodology in order to model a mathematical transformation of the probability of one given event occurring. For example, using this technique and based on the individual profile of each claimant, it was possible to predict the probability of a given claim being for a lost or stolen vehicle or for repairs. See, e.g., A. Agresti, Analysis of Ordinal Categorical Data (John Wiley & Sons, Inc., New York, 1984); P. McCullagh and J.A. Nelder, Generalized Linear Models 2d ed. (Chapman Hall, New York, 1989).

210/ Sixth Report, para. 65 and notes 79-82.

211/ Ibid., paras. 66-67.

212/ This group was composed of claims that were identified as being for boats or motorcycles.

213/ Sixth Report, paras. 68-72 and accompanying notes.

214/ In connection with the valuation of these losses, PAAC asserted that it had enlisted the assistance of internationally recognized loss adjusters who developed principles and policies in respect of the proper evaluation of losses of many types of property, including boats. In addition, a number of claims reviewers at PAAC had knowledge and experience of the local boat markets. Further, the registration and insurance documents submitted in support of the losses provided specific information about the boats which became the basis for developing a valuation of the boat. Purchase data received from some claimants assisted as a point of reference for others. Finally, loss adjusters regularly contacted local marine retailers to solicit data on the average price of crafts with the specifications of the crafts lost or destroyed and, when satisfied with the validity of the amounts provided by the retailers, used them to complete the claim. No depreciation was used in such an instance.

215/ See para. 197 supra.

216/ See generally First Report, pp. 159-162.

217/ First Report, pp. 164-165.

218/ Second Report, paras. 42-43.

219/ In the sixth instalment, the Panel considered the substantial numbers of claimants, as well as the general data quality and availability of information in the claim files presented to the Commission and determined that the fact that the secretariat had communicated the procedures to the Governments concerned and forwarded the lists to the Kuwaiti Government as stipulated fulfilled the Panel's requirement. Sixth Report, paras. 112-115.

220/ First Report, pp. 165-166.

221/ "Report and Recommendations Made by the Panel of Commissioners Concerning the Egyptian Workers' Claims (Jurisdictional Phase)" S/AC.22/1995/R.20/Rev.1 ("First 'EWC' Report"), paras. 185-186. The "EWC"

Panel did not need to make a determination on the effect of the embargo, finding that Iraq was liable to transfer the amounts and that its failure to do so was a direct result of its invasion and occupation of Kuwait.

222/ "Report and Recommendations of the Panel of Commissioners Concerning the First Instalment of "E2" Claims" S/AC.26/1998/7 ("First"E2" Report"), paras. 135-140.

223/ These individuals were generally nationals of countries exporting large labour forces to Iraq.

224/ In addition to requesting information directly from the Missions of the countries concerned, a number of sources were consulted in this research. They include: Sharon Stanton Russell, "Remittances from International Migration: A Review in Perspective", 14 World Development 677-696, (Great Britain, 1986); Nazli Choucri, "The Hidden Economy: A New View of Remittances in the Arab World", 14 World Development 697-712 (Great Britain, 1986); J.S. Birks, I.J. Seccombe and C.A. Sinclair, "Labour Migration in the Arab Gulf States: Patterns, Trends and Prospects", 26 International Migration 267-284 (September 1988); Charles W. Stahl, "Overseas Workers' Remittances in Asian Development", 20 International Migration Review 899-925, (Winter 1986); J. Addleton, "The Impact of the Gulf War on Migration and Remittances in Asia and the Middle East", 29 International Migration 509-525 (December 1991); J.S. Birks, I.J. Seccombe and C.A. Sinclair, "Migrant Workers in the Arab Gulf: The Impact of Declining Oil Revenues", 20 International Migration Review 799-814 (Winter 1986); GB.249/15/7, "Migrant Workers Affected by the Gulf Crisis: Report of the Director-General", International Labour Office (Geneva, 27 February-2 March 1991); The Arab Labor Conventions and Recommendations. (Arab Labor Organization: Arab Labor Office); Dr. A. Bondahrain, "The Arab Labor Organization", International Encyclopedia for Labour Law and Industrial Relations. (Kluwer Law International, The Hague, London, Boston, 1998).

225/ First Report, pp. 166-167.

226/ Third "D" Report, paras. 104-107.

227/ Ibid., para. 113.

228/ This was particularly true in the case of Egypt. Of 200 claims for C5-SOS losses from Egypt that were sampled, 199 claims contained C5-SOS amounts in the electronic database that were not included in the paper claims and that were simply duplicates of C5-BA losses. Therefore, Egyptian claimants were excluded from the recategorization exercise.

229/ It was observed during the review that, in several instances, claimants had purchased cashiers cheques from 25 July 1990 onward, presumably in anticipation of traveling to their home countries to spend the vacation period there. Upon arrival in the home countries and presentation of the cheques after 2 August 1990, the claimants found that local banks would not honour them.

230/ Claimants often presented evidence for valid C5-SOS losses such as stock certificates, but provided no explanation of what their loss was or how it occurred.

231/ The Panel's deliberations and considerations in this respect are detailed in the First Report, pp. 168-173.

232/ See generally First Report, pp. 174-181.

/...

233/ Ibid., pp. 181-182.

234/ Ibid., pp. 182-183.

235/ In arriving at this determination, the Panel had considered that more than 90 per cent of claimants had provided some form of evidence in support of their pre-invasion salary or income level. Evidentiary support included pay stubs, bank statements, wire transfer confirmations, employment contract provisions, employer letters, and published pay scales. Claimants had also provided names of sponsors. Further, the Panel was able to consider background information regarding expatriate employment patterns in Iraq and Kuwait. First Report, pp. 183-184.

236/ First Report, pp. 184-192.

237/ Ibid., pp. 193-194.

238/ Second Report, para. 45. For this purpose, a claimant's C6-Salary claim, in principle, is represented by the aggregate of the amount stated in the "Wages or Salary" and "Other" fields of the "C6" page of the claim form. The Panel's principal rationale for imposing a compensation limit was to minimize the risk of excessive overcompensation, while the actual level of the cap sought to avoid treating less affluent claimants unfairly. Ibid., para. 50.

239/ First Report, p. 181.

240/ See generally Second Report, paras. 44-51.

241/ First Report, p. 183.

242/ Sixth Report, paras. 28-35.

243/ Ibid., para. 35.

244/ Fifth Report, para. 15. In accordance with the Panel's policy on outlier claims, the Panel determined that those claims with outlier predicted monthly salary amounts for C6-Salary losses should be reviewed before being reported. That review was completed in time for all remaining claims to be included in the seventh instalment. However, a few of these outlier claims were included among claims reported in the sixth instalment and were thus awarded no compensation for C6-Salary losses. Corrections to these sixth instalment awards will be included in a subsequent article 41 report.

245/ The Panel chose an option that selected average amounts recommended per salary and nationality groupings. There were six salary ranges that were determined by a standard statistical clustering technique which, for a given number of groups, defines "cut-points" so that the groups are as homogeneous as possible in respect of the distribution of prior monthly salaries. The groups and their ranges were as follows: (a) Group 1: US$750-US$1,130; (b) Group 2: US$1,130-US$1,590; (c) Group 3: US$1,590-US$2,080; (d) Group 4: US$2,080-US$2,630; (e) Group 5: US$2,630-US$3,250; (f) Group 6: more than US$3,250. Sixth Report, para. 78 and notes 95-96.

246/ Sixth Report, paras. 77-78. In the Sixth Report, the Panel also used other electronic surveys and techniques to render hitherto unprocessable C6-Salary claims processable. See, for example, Sixth Report, paras. 73-76, 79.

247/ See, for example, "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Claims by Governments and International Organizations ("Category 'F' Claims")", S/AC.26/1997/6 ("First 'F' Report"), paras. 93-96; "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of "E2" Claims", S/AC.26/1998/7 ("First 'E2' Report"), paras. 156-157, 163; and "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of "E2" claims", S/AC.26/1999/6 ("Second 'E2' Report"), paras. 62, 66, 68(c), 101-106, 131.

248/ First "F1" Report, paras. 95-96.

249/ First "E2" Report, para. 157. The issue before the "E2" Panel concerned losses in Saudi Arabia only.

250/ First "E2" Report, para. 157.

251/ Second "E2" Report, para. 102-104.

252/ The Panel duly noted that 40 claims presenting the same fact patterns had been included among those reported in the sixth instalment, but had not been awarded compensation in respect of C6-Salary losses. The Panel has therefore requested the secretariat to include those claims in an article 41 corrections instalment, to be awarded compensation in accordance with its decisions in this seventh instalment.

253/ First Report, pp. 182-183.

254/ First Report, p. 178.

255/ First "D" Report, paras. 297, 337.

256/ Of approximately 5,300 claims for C6-Support losses that remained to be reviewed after the reporting of the sixth instalment, nearly 4,400 claims were from Egypt. Sample reviews concluded that nearly all of the "support" entries were erroneous and were not reflected in the paper claims. Therefore, all claims were evaluated simply as C6-Salary losses.

257/ See discussion of "multiple" claims supra, paras. 21-25.

258/ These situations were most often identified during the review of claims for C3 death losses, when the date of death preceded 2 August 1990.

259/ Family members could be identified when there were claims for witnessing injury to a family member, additional claims for C1-MPA for forced hiding or illegal detention (the additional claims were for family members) or additional C6-Salary pages. In other instances, they were identifiable from documentation submitted in the claim file.

260/ See, for example, Amiri Decree of August 1976 and Law No. 74 of 1979 of Kuwait (regulating the right of real property ownership of non-Kuwaitis).

261/ See generally First Report, pp. 196-199 (describing the general situation in respect of real property in Kuwait and detailing causes of property damage).

262/ First Report, p. 195.

263/ For a detailed review of the Panel's considerations in the first instalment, see First Report, pp. 203-207.

264/ The Panel based the US$20,000 amount on article 35(2)(c) of the Rules which provides that "[d]ocuments and other evidence required will be the reasonable minimum that is appropriate under the particular circumstances of the case. A lesser amount of documentary evidence ordinarily will be sufficient for smaller claims such as those below US$20,000".

265/ If the amount claimed in excess of US$20,000 was not fully supported by such documentary evidence, the claim was reduced accordingly, with reference to the amount for which documentary evidence had been submitted, but generally not less than US$20,000, providing that there was a statement as described in para. 310(a) in support of the loss amount.

266/ As described *infra*, paras. 321-323, the Panel expanded this finding in the seventh instalment to include real property located in Israel, damaged as a result of Iraqi Scud missile attacks.

267/ The four per cent corresponds to the part of the repair amounts claimed that was not supported by primary evidence in the sample group of claims.

268/ The ten per cent corresponds to the part of the other expense amounts claimed that was not supported by primary evidence in the sample group of claims.

269/ In its Second "E2" Report, the "E2" Panel found specifically that these missile attacks constituted actual "military operations" as defined in paragraph 21 of decision 7. Consequently, the "E2" Panel deemed any losses suffered in Israel from 18 January 1991 to 2 March 1991 as a direct result of these military operations to be compensable. Second "E2" Report, paras. 102-104.

270/ Most properties were located in Ramat Gan, Tel Aviv and Haifa, all sites of Scud missile attacks.

271/ These consisted of claims where identical amounts already existed in the correct loss category or where amounts were erroneous entries or for which no information was provided in respect of the nature of the loss claimed. In most situations observed, claimants made no distinction between "real property" and "personal property", using the phrases interchangeably.

272/ S/AC.26/1992/15, para. 9.II(i).

273/ Decision 4 provides that any business that indicates a status of separate legal personality is not eligible for consideration in a category "C" claim. Further, claimants were instructed that claims for jointly owned businesses should be submitted jointly with the other participants in the business in the country in which the business is located.

274/ Approximately 60 per cent of the claimants in the first instalment were engaged in semi-skilled activities, providing technical services or working as tailors, hairdressers and other similar professions. Roughly 20 per cent operated small retail stores. Most of the remaining claimants were involved in the construction business. First Report, p. 218 and note 383.

275/ See generally First Report, pp. 208-211 and accompanying notes. Claims for C8-Business losses in the first instalment were generally based on business losses occurring in Kuwait.

276/ The few exceptions concerned peddlers and limited categories of small shops. First Report, p. 209 and note 354.

277/ Terms were agreed to by the parties, most often only verbally, and varied from case to case. Two types of arrangements were commonly found: (a) the license user ran the business without any interference or financial participation on the part of the license holder, who generally received a fixed monthly fee for the use of the license; and (b) the license holder provided part of the capital and in return received a percentage of the business income. First Report, pp. 209-210.

278/ For a discussion of these criteria and the Panel's methodology in its first instalment, see First Report, at pages 218-225.

279/ In this connection, the Panel requested that, pursuant to article 32(3) of the Rules, one claim be transferred to category "E" because it had corporate, rather than individual, status.

280/ The Panel was reassured by submission of information from the Government of Kuwait that indicated that the role of the license holder was primarily to act as a sponsor. Only rarely did the sponsor furnish business capital. Thus, to the extent Kuwaiti license holders were claiming for the same business, it would most often be to the extent of the income lost for having leased the permit.

281/ The remaining claimants either provided evidence showing that their businesses were sole proprietorships or simple partnerships, or did not provide any information at all related to the legal status of their business. The Panel considered that a claimant's submission of his claim in category "C" was an implied assertion, in the absence of evidence to the contrary, of eligibility to have the business claim processed as a C8-Business loss claim.

282/ In a number of claims in this review, the country of the business location had not been indicated. In many cases, therefore, the review ascertained that the businesses were indeed based in Iraq or Kuwait or that "other" had been erroneously indicated.

283/ In C8-Business losses, an claimant would have incurred losses in an individual capacity, with neither benefit from nor protection through a separate legal personality.

284/ It was determined during the review that one claim was erroneously submitted as a C8-Business loss when it should have been submitted as a claim for C7-Repair costs. The claim was accordingly reclassified and evaluated by the Panel as C7-Repair costs.

285/ Economic Intelligence Unit, Country Report: Israel, No. 1, p. 16 (1996).

286/ Ibid., p. 22.

287/ Second "E2" Report, paras. 101, 106.

288/ Sixth Report, note 113. For a discussion of the Panel's considerations and conclusions in respect of C5-Other losses, see Sixth Report, paras. 89-94.

289/ Claims from India and Bangladesh were included in sample reviews together because the countries represented one fairly homogeneous sampling profile.

290/ This differed from the trend observed in the first instalment. There, however, claims were submitted principally by Pakistan and were quite homogeneous in composition.

291/ While business status was not indicated in the electronic database in approximately 6,000 situations, given all other attributes of the claims and given that single proprietorships accounted for 77 per cent of all commercial establishments in Kuwait, in the absence of evidence to the contrary, the Panel considered these businesses to be sole proprietorships.

292/ These groups represented nearly 80 per cent of the claimant population. Percentage levels for general evidence and primary evidence that were submitted by other countries and international organizations were determined after an individual assessment of claims submitted by those entities.

293/ The data used for the 1989-1990 comparison analysis were taken from statistics regarding the Retail Trade and Services Sector that were obtained from the Central Statistical Office of the Ministry of Planning for the State of Kuwait.

294/ Both percentages for sectoral distribution and macro-economic benchmark amounts for claimant groups representing other submitting entities were determined after individual reviews of the claims.

295/ These macro-economic benchmarks considered that the estimated benchmark loss for the retail trade ("RT") sector was equal to KWD 32,156 (US$111,266), while that for the personal services ("PS") sector was equal to KWD 8,100 (US$28,028). Thereafter, the macro-economic benchmark for each claimant group was calculated by multiplying KWD 32,156 by the percentage of that group's representation in the RT sector and adding that result to the result obtained by multiplying KWD 8,100 by the percentage of the same group's representation in the PS sector.

296/ Sixth Report, paras. 89-94.

297/ Ibid., paras. 81-83.

298/ In such claims, the amount calculated by the C1-Money model in category "C" would have been entirely offset by category "A" awards and there would have been no other compensable loss in the claim.

299/ In connection with the rejection of these claims, the Panel notes, in particular, that the claimants' asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. See First Report, p. 194; Second Report, note 48; Third Report, note 15; Fourth Report, note 25; Fifth Report, note 42; and Sixth Report, note 153.

300/ First Report, pp. 32-33.

301/ See also S/AC.26/1992/16.

Annex IV

Decision concerning the seventh instalment of individual claims for damages up to $100,000 (category C claims) taken by the Governing Council of the United Nations Compensation Commission at its 88th meeting, held on 24 June 1999 at Geneva*

The Governing Council,

Having received, in accordance with article 37 of the Provisional Rules for Claims Procedure, the Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of individual claims for damages up to US$100,000 (category "C" claims), covering 71,069 claims, 1/

1. *Approves* the recommendations made by the Panel of Commissioners, and, accordingly,

2. *Decides*, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards for 67,079 claims included in the report. The aggregate amounts per country or international organization, as referred to in paragraph 374 and listed in table 5 of the report, are as follows:

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Afghanistan	620	68	6,546,539.61

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* Previously issued as document S/AC.26/Dec.70 (1999).

1/ The text of the report appears in document S/AC.26/1999/11. In conformity with the provisions on confidentiality in the Provisional Rules for Claims Procedure (article 30, paragraph 1, and article 40, paragraph 5), a table containing the breakdown of the amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government and international organization seperately.

/...

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Algeria	16	0	695,540.82
Argentina	1	0	70,538.55
Australia	55	2	1,702,771.53
Austria	13	3	620,999.83
Bahrain	6	4	148,039.74
Bangladesh	2,019	11	37,554,395.74
Belgium	6	1	231,802.31
Benin	1	0	9,177.00
Bulgaria	8	0	125,605.86
Cameroon	1	0	8,766.44
Canada	250	8	11,857,638.70
Chad	1	0	22,563.35
China	4	0	124,658.70
Croatia	7	0	192,329.35
Cyprus	2	1	122,504.84
Czech Republic	8	1	145,166.19
Denmark	3	0	144,690.81
Egypt	13,598	1,446	228,574,373.13
Ethiopia	8	0	55,973.18
Federal Republic of Yugoslavia	5	2	148,194.04
Finland	15	0	297,969.31
France	171	5	6,534,238.54
Germany	54	6	2,220,488.11
Ghana	1	0	47,734.21
Greece	15	0	614,271.21
Hungary	9	0	284,036.35
India	8,970	386	185,773,000.03
Iran	731	40	26,975,073.39
Ireland	45	0	1,265,251.55
Israel	230	11	4,821,126.19
Italy	50	3	1,440,604.82
Japan	22	0	582,774.02
Jordan	8,464	445	279,894,629.49

/...

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Kenya	4	0	15,458.48
Korea	35	0	2,365,481.86
Kuwait	18,516	166	784,934,659.15
Lebanon	548	6	15,514,902.72
Malaysia	1	0	22,453.23
Mauritius	13	0	163,472.65
Morocco	25	0	769,485.67
Nepal	2	0	14,495.18
Netherlands	24	4	814,269.57
New Zealand	7	0	237,824.47
Niger	1	0	34,733.08
Nigeria	23	1	271,732.67
Norway	1	0	22,092.68
Pakistan	3,997	973	72,220,012.40
Philippines	1,007	237	10,254,242.61
Poland	49	10	716,179.29
Portugal	2	2	63,496.91
Romania	1	0	31,894.07
Russian Federation	1	0	48,442.91
Saudi Arabia	2	4	60,431.66
Senegal	2	0	46,662.16
Seychelles	1	0	60,418.14
Sierra Leone	1	0	42,433.14
Singapore	4	0	191,724.05
Slovakia	4	1	69,466.82
Slovenia	5	0	119,825.39
Somalia	64	9	1,180,810.34
South Africa	1	0	31,786.29
Spain	5	0	147,896.97
Sri Lanka	964	17	5,187,819.35
Sudan	626	3	14,740,586.11
Sweden	20	1	935,577.80
Switzerland	8	0	207,359.65
Syria	1,970	20	56,697,373.20

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation recommended (US$)
Tanzania	2	0	23,909.76
Thailand	46	0	912,347.94
Tunisia	327	5	8,305,384.84
Turkey	84	2	2,525,646.17
UNDP Jerusalem	125	4	4,324,195.44
UNDP Kuwait	27	11	891,369.68
UNDP Washington	28	4	1,130,475.75
UNDP Yemen	38	3	681,255.41
UNHCR Bulgaria	10	1	285,424.54
UNHCR Canada	23	7	1,121,785.59
UNHCR Geneva	1	0	16,551.20
United Arab Emirates	0	7	0.00
United Kingdom	771	20	28,429,392.05
United States of America	428	5	15,788,081.21
UNRWA Gaza	235	11	6,757,977.27
Vietnam	3	0	33,326.47
Yemen	1,588	13	79,127,855.58
Total	67,079	3,990	1,918,413,948.51

3. Reaffirms that when funds become available payments shall be made in accordance with decision 17 [S/AC.26/Dec.17 (1994)],

4. Recalls that when payments are made in accordance with decision 17 [S/AC.26/Dec.17 (1994)] and pursuant to the terms of decision 18 [S/AC.26/Dec.18 (1994)], Governments and international organizations shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Decides that no compensation shall be awarded concerning the 3,990 claims referred to in paragraph 175 of the report,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and copies of the report and the tables containing the amounts to be paid to each individual claimant to each respective Government and international organization.

Annex V

Report and recommendations made by the Panel of Commissioners concerning the third instalment of individual claims for damages above $100,000 (category D claims)*

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* Previously issued as document S/AC.26/1999/9.

CONTENTS

	Paragraphs	Page
Introduction	1 - 3	159
I. BACKGROUND	4 - 7	159
A. Background information	4 - 5	159
B. General legal framework	6	159
C. Applicable evidentiary standard	7	160
II. NEW ISSUES ARISING IN APPLICATION CLAIMS	8	160
A. D1(money) issues: claims for departure expenses incurred outside the jurisdictional period	9	160
B. D1(MPA) issues	10	160
C. D2(personal injury) issues	11 - 16	161
1. Determination of applicable deemed annual income	11	161
2. Concurrent claims for D2(personal injury) and D6(loss of income)	12	161
3. Claims arising out of multiple sexual assaults	13	161
4. Claims for development of abnormalities during pregnancy	14	161
5. Claims concerning congenital conditions	15 - 16	162
D. D3(death) issues: claims for missing persons	17	162
E. D6(loss of income) issues	18 - 22	162
1. Claims for farm subsidies	18 - 19	162
2. Claims for loss of income where the claimant was re-employed during the jurisdictional period	20 - 21	163
3. Claims with proof of employment but no evidence of income earned	22	163
F. D(other) issues	23 - 25	163
1. Claims arising from fines imposed by courts in Iraq	23	163
2. Claims arising out of bribes paid	24 - 25	164
III. REVIEW OF PREVIOUS PANEL DECISIONS	26 - 28	164
A. D6(loss of income): End of service indemnities	26 - 28	164
IV. PANEL DETERMINATIONS ON OTHER CLAIMS IN THE THIRD INSTALMENT	29 - 35	165
V. RECOMMENDATIONS	36 - 40	166
A. Awards by submitting entity	36	166
B. Interest and exchange rates	37 - 39	166
C Submission through the Executive Secretary to the Governing Council	40	167
Notes		168
Appendix		169

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Introduction

1. This is the fifth report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages above US$100,000 (category "D" claims).[1] This report contains the determinations of the Panel in respect of the third instalment, comprising 440 category "D" claims, submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. The Panel began its review of the third instalment in July 1998 when it issued the related procedural order. The third instalment is made up of claims which contain loss types for which methodologies were developed during the consideration of claims in the first and second instalments, ("application claims").[2] In addition to regular communications, the Panel met with the secretariat at the Commission's headquarters in Geneva to consider claims in the third instalment on the following dates: 27-29 July 1998, 16-18 November 1998, 21-22 December 1998 and 25-27 January 1999.

3. At each meeting held to consider claims in the third instalment, the Panel reviewed a number of claims with new issues that had not arisen in previous instalments. The Panel also examined the application of the methodologies already developed and satisfied itself that the appropriate methodologies had been applied to each loss claimed.

I. BACKGROUND

A. Background information

4. The factual background relating to Iraq's invasion and occupation of Kuwait that was taken into account by the Panel in reviewing claims in this third instalment, is set out in detail in the First and Second Reports[3].

5. The Panel has also taken into consideration additional relevant material, including information accompanying the submission of the third instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules and additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules.

B. General legal framework

6. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First Report.

C. Applicable evidentiary standard

7. The issue of evidentiary standards to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the First Report and chapter II of the Second Report. [4] These two reports were approved by the Governing Council in decisions 47 and 49 respectively. [5] As with the first and second instalments, the Panel has reviewed the claims in the present instalment and made its recommendations by assessing the documentary and other appropriate evidence as well as balancing the interests of claimants, who had to flee a war zone, with the interests of the Government of Iraq, which is liable only for damages caused as a direct result of its invasion and occupation of Kuwait.

II. NEW ISSUES ARISING IN APPLICATION CLAIMS

8. As indicated above, some of the application claims in this instalment raise new issues that were not dealt with in either the First or Third reports. These new issues and the Panel's determinations on those issues are set out in this section.

A. D1(money) issues: Claims for departure expenses incurred outside the jurisdictional period

9. The Panel considered claims submitted by individuals who had incurred D1(money) expenses outside the period 2 August 1990 - 2 March 1991 (the "jurisdictional period"). While the claimants had themselves departed during the jurisdictional period, expenses such as furniture transport costs were not incurred until after 2 March 1991. The Panel determined that in order to be considered for compensation, in addition to proper documentary evidence of the expenses claimed, there must be an acceptable explanatory statement [6] as to why the expenses claimed were incurred outside the jurisdictional period and their relation to Iraq's invasion and occupation of Kuwait.

B. D1(MPA) issues

10. A number of D1(MPA) claims are submitted on behalf of minors, ranging from newborns to adolescents, for forced hiding during Iraq's invasion and occupation of Kuwait. The Panel took cognizance of the circumstances of forced hiding by family groups during the jurisdictional period and considered the question of the ability of a child to experience a "manifestly well-founded fear for one's life or of being taken hostage or illegally detained". The Panel determined that children who had learnt to walk and had to be restrained and confined would be capable of experiencing such fear. Accordingly, the Panel considered that a child of two years or older would be considered capable of experiencing a "manifestly well-founded fear" for the purposes of D1(MPA) claims.

C. D2 (personal injury) issues

1. Determination of applicable deemed income

11. The Panel considered a personal injury claim where the victim was a non-Kuwaiti injured in Kuwait who took treatment in a third country. The Panel determined that for the purposes of calculating the recommended D2(personal injury) award and assigning a deemed income to the injured person, the deemed income should take into account the location of the injury. Since the injury occurred in Kuwait, the deemed income for Kuwait was used for calculating the recommended award. [illegible]

2. Concurrent claims for D2(personal injury) and D6(loss of income)

12. The Panel considered whether individuals who had claimed losses under both D2(personal injury) and D6(loss of income) could receive concurrent awards for both loss types. The Panel concluded that although both loss types contemplate loss of income as an element of compensation, concurrent awards would not result in overlapping compensation as the D6 loss relates to the loss of a specific term of employment and the D2 loss relates to the inability of the claimant to continue to earn income due to injury.

3. Claims arising out of multiple sexual assaults

13. The Panel considered the language of decision 8 of the Governing Council [illegible] in the light of mental pain and anguish claims where consecutive multiple sexual assaults had occurred. Decision 8 establishes a ceiling of US$5,000 "per incident" of sexual assault while a ceiling of US$30,000 per individual is set for all types of MPA claimed. The Panel decided that, in the case of consecutive multiple assaults which occurred on the same occasion, each assault should be viewed as an "incident" within the language of decision 8, having regard to the comparative severity of the mental pain and anguish suffered by a victim of multiple assaults versus a single assault. Accordingly, the Panel determined that the victim would be entitled to US$5,000 for each incident of sexual assault, up to a maximum of US$30,000.

4. Claims for development of abnormalities during pregnancy

14. Claims for pre-natal injuries caused to a child should be considered compensable losses where a direct causal link between the physical condition that caused the injury and Iraq's invasion and occupation of Kuwait can be established. In one claim, the Panel determined that the medical evidence established that pregnancy complications arising from a scud missile attack resulted in foetal stress causing the child to be born with severe brain damage. The Panel has recommended an award of compensation on the basis that the injury to the child was directly caused by military operations of Iraq in the context of Iraq's occupation of Kuwait.

5. Claims concerning congenital conditions

15. The Panel considered a claim by a mother on behalf of her son who was five years old at the time of an Iraqi missile strike near their home. The mother alleges that she noticed a squint in her son's left eye which rapidly deteriorated to complete esotropia (a rotation of the eyeball towards the nose) and loss of vision. The boy underwent two operations in an effort to correct the problem, but without success. Two medical reports were provided, both of which left in considerable doubt the connection between the esotropia and the emotional trauma. One report noted that the mother had a history of esotropia.

16. The Panel found that the claimant had not established a clear causal link between the onset of the esotropia and the scud missile attack. The Panel also took into account the fact that there was a family history of the condition and determined that without a clear link between the onset of the condition and Iraq's invasion and occupation of Kuwait, no compensation could be awarded.

D. D3(death) issues: Claims for missing persons

17. The Panel considered a D3(death) claim for a missing person where the claimant had not provided proof of death. Having regard to the passage of time between the submission of the original claim and the processing of the claim, the Panel was of the view that the claimant should be contacted in order to determine whether there was any further information available concerning the missing person since the submission of the claim or whether the claimant was able to furnish appropriate evidence of death. After having made a request of the claimant for such further evidence and receiving no response, the Panel determined that no compensation could be awarded.

E. D6 (loss of income) issues

1. Claims for farm subsidies

18. A number of individuals claim under D6(loss of income) for loss of support in connection with farm operations in Kuwait. The claimants were lessees of land from the Kuwait Department of State Properties and were licensed to exploit the land for agricultural purposes. Before Iraq's invasion, the lessees received government support from the General Authority for Agriculture for their farming activities and they now claim compensation in respect of the government subsidy that they would have received in 1991 and 1992.

19. The Panel considered that, generally, losses suffered by farming operations that were shown to be directly related to Iraq's invasion and occupation of Kuwait could be compensable. However, as the claimants were not engaged in any farming operations during the period claimed for, non-receipt of a subsidy would not constitute a compensable loss to the claimants. The Panel has therefore recommended that no compensation be awarded for the failure to receive the subsidy.

2. Claims for loss of income where the claimant was re-employed during the jurisdictional period

20. A number of individuals who had submitted D6(loss of income) claims relating to their employment which was terminated at the time of the invasion were able to secure new employment during the jurisdictional period. The Panel considered a claimant's duty of mitigation in the employment loss context and general principles of damages in determining how to treat income from such new employment in the calculation of compensation. The Panel took cognizance of the Background Report on Employment Claims prepared for the Commission by an international labour expert [10] and concluded that the duty to mitigate the employment loss was already built into the methodology employed by the Commission.

21. The Panel therefore determined that, as a general rule, income from new employment secured after 2 August 1990 will not be deducted from the recommended award calculated under the D6 methodology as it is already accounted for in the methodology. However, the Panel would review on an individual basis any case where the claimant earned substantial income from the new employment.

3. Claims with proof of employment but no evidence of income earned

22. In instances where claimants have provided proof of employment at the time of Iraq's invasion of Kuwait but have been unable to provide documentary evidence of their salary, the Panel determined that the "Table of Average Wages of Paid Employment in the Labour Force" included in the PAAC "C" Covering Report, could be used to calculate compensation based upon statistical information concerning the claimants' type of employment and nationality. [11] The Panel emphasized that both the fact of employment and an employment-related loss would have to be clearly established in order for the claimant to receive compensation using the PAAC monthly income figures.

F. D(other) issues

1. Claims arising from fines imposed by courts in Iraq

23. The Panel considered claims for fines paid by the claimant to a court in Iraq and claims for funds confiscated pursuant to a court order issued by a court in Iraq. The Panel determined that where the fines levied by the court or the court-ordered confiscation of funds were directly related to Iraq's invasion and occupation of Kuwait, the amounts lost would be compensable. The Panel decided that where the amounts lost are evidenced by a court order, the claimant should provide the original or a certified copy of the court order to the Panel for confirmation.

2. Claims arising out of bribes paid

24. A claimant who was visiting Iraq at the time of Iraq's invasion of Kuwait states that he paid bribes to various "guards, drivers, judges and other authority figures" to secure his release after having been taken into custody in Iraq. The Panel considered whether amounts allegedly paid as bribes to secure a person's release from detention in Iraq were directly related to Iraq's invasion and occupation of Kuwait and what would constitute sufficient proof of payment of such bribes.

25. The Panel considered that such claims would have to be reviewed in the light of the circumstances of each case and the evidence provided. The Panel held that in the present case the claimant had failed to provide any acceptable evidence and concluded that no award be recommended.

III. REVIEW OF PREVIOUS PANEL DECISIONS

A. D6(loss of income): End of service indemnities

26. In the Third Report, the Panel noted that some of the non-Kuwaiti public sector employees employed in Kuwait prior to Iraq's invasion and occupation of Kuwait had acknowledged receiving end of service indemnities from their employers.[12] The Panel had taken into consideration the fact that end of service indemnities had already been factored into the D6(loss of income) salary multiplier and determined that, where evidence existed that a claimant had received end of service indemnities, those amounts should be deducted from the recommended amount of compensation.

27. Subsequent to its decision in the Third Report, the Panel received information from the Government of Kuwait concerning the nature and method of calculation of the end of service indemnities. After a review of this information, the Panel has come to the conclusion that such end of service indemnities were in fact in the nature of superannuation, a non-contributory service benefit accrued over time by the employee, and were payable to the employee in any event at the time of termination. The Panel also took note of the fact that the Government of Kuwait did not file a claim with the Commission for the reimbursement of these benefits.

28. In the light of this further information, the Panel determined that such end of service indemnities could not be deducted from the recommended awards calculated under the D6(loss of income) methodology and that, where necessary, amendments should be made to any claims from previous instalments where end of service indemnities had been deducted from the recommended awards. Such corrections will be recommended in reports on subsequent instalments.

/...

IV. PANEL DETERMINATIONS ON OTHER CLAIMS IN THE THIRD INSTALMENT

29. In the course of reviewing and checking the application of the methodologies to the claims in the third instalment, the Panel made a number of additional determinations.

30. The D2(personal injury) claims reviewed by the Panel included claims for injuries which had occurred outside the jurisdictional period. The Panel affirmed that in order for such injuries to be compensable, the claimant had to demonstrate a clear and direct connection between the injury and Iraq's invasion and occupation of Kuwait. In one claim, the Panel determined that since the claim of a child born with severe brain injuries had been recommended for compensation (referred to at paragraph 14, supra), the father's claim should be rejected as it duplicated the same loss. In another case, the Panel held that where a claimant failed to tick the D2(MPA) box on the claim form, but clearly demonstrated MPA in the attached statement, the claimant could receive compensation for MPA.

31. The Panel noted that a small number of claims with D4(personal property) losses had been inadvertently included in the third instalment. The Panel held that since the D4(personal property) methodology had been developed and approved by the Commission's Governing Council before the completion of the third instalment, it was able to make recommendations for these claims.

32. In both the First and Third Reports, the Panel considered the compensability of D6(loss of income) claims by the employees of the London branch of an Iraqi state owned bank which closed down shortly after Iraq's invasion of Kuwait. The Panel concluded then that such claims would be compensable regardless of the location of the loss if the loss was shown to be directly related to Iraq's invasion and occupation of Kuwait. In this instalment, one such bank employee was not compensated for the claimed loss of income because the Panel determined that the termination of the claimant's employment in July 1993 was no longer directly related to the invasion and occupation due to the time that had elapsed since the invasion and occupation.

33. The Panel considered a claim submitted under D6(loss of income) in relation to an individual's subcontracts for services. The trigger for payment under the subcontracts was the invoicing of the work by the contractor or delivery of the completed works according to the project schedule. The Panel held that because the projects that were the subject of the contracts did not go forward or were cancelled, the trigger for payment under the subcontracts did not occur and therefore no compensation was recommended.

34. A number of individuals filed claims under D6(loss of income) which are more properly categorized as D8/9(business loss) claims. The Panel determined that such claims could not reasonably be processed under the existing methodologies, and therefore directed that the claims be deferred for consideration with individual business loss claims.

/...

35. The Panel reviewed a number of claims in which individuals claimed for judgment debts that pre-dated Iraq's invasion and occupation of Kuwait. The Panel determined that where the judgment debtor continues to exist, or where the claimant has failed to make sustained attempts to collect on the judgment debt, the claims are not compensable. The Panel determined that to be eligible for consideration, the claimant must establish that the disappearance or insolvency of the judgement debtor is directly related to the invasion and occupation.

V. RECOMMENDATIONS

A. Awards by submitting entity

36. The annex hereto lists the awards recommended by the Panel for each Government and international organization that has claimants included in the third instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the annex, against the total amount claimed of US$102,987,603.71, the Panel has recommended compensation totalling US$19,502,642.64.

B. Interest and exchange rates

37. The Panel recommends that interest be awarded pursuant to its determinations as set out in chapter V, section H of the First Report.

38. For purposes of calculating recommended amounts, the Panel has converted currencies other than United States dollars pursuant to its determinations set out in chapter V, section G of the First Report.

39. Where losses are claimed for money in currencies other than United States dollars and it is established from the evidence in the claim file that the application of the exchange rate approved by the Panel mentioned above, would result in either under-compensation or over-compensation of the claimant, the Panel determined that it will select a conversion rate based on the evidence that most closely compensates the claimant for the value of the loss suffered. This would be applied in situations, in particular, where the claimant has submitted evidence that he or she purchased the money at a rate different to the rate approved by the Panel.

/...

C. Submission through the Executive Secretary to the Governing Council

40. The Panel respectfully submits this report through the Executive Secretary to the Governing Council, pursuant to article 38(e) of the Rules.

Geneva, 26 January 1999

(*Signed*) R.K.P. Shankardass
Chairman

(*Signed*) H.M. Joko-Smart
Commissioner

(*Signed*) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ In the first instalment of category "D" claims, the Panel developed methodologies for the following loss types: D1(money); D1(mental pain and anguish ("MPA"); D3(death); D4(motor vehicles); D6(loss of income); D10(payment or relief to others); and D10(other). A full description of the methodologies is set out at paragraphs 103 to 382 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/1)("First Report"). The Panel developed methodologies for the following loss types in part one of the second instalment: D2(personal injury) and D5(loss of bank accounts, stocks and other securities). These methodologies are described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" ("Third Report"), at paragraphs 11-116.

3/ See in particular chapter II of the First Report and chapter IV of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/3) ("Second Report").

4/ See also paragraph 8 of Governing Council decision 7 which provides that "[s]ince ... [D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss" (S/AC.26/1991/7/Rev.1). See also articles 35(2) and (3) of the Rules.

5/ S/AC.26/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

6/ See paragraph 75 of the First Report for the Panel's elaboration on an "acceptable explanatory statement".

7/ See paragraph 3(f) of Governing Council Decision 3 (S/AC.26/1991/3).

8/ See paragraph 70 of the Third Report for an explanation of how the "deemed income" is determined. The deemed annual income for Kuwait was established by the Panel as being KWD 6000 pursuant to the "Table of Average Wages of Paid Employment in the Labour Force" which is part of a report entitled "Ministry of Planning Final Results Labour Force Survey, March 1988 (Part I)", contained in the "Covering Report and Supporting Materials for Claims in Category C Submitted to the United Nations Compensation Commission by the Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression, Government of the State of Kuwait, 14 April 1994" ("PAAC 'C' Covering Report").

9/ S/AC.26/1992/8

10/ "Background Report on Employment Claims (C6)" prepared for the Commission by Alan Gladstone, December 1993.

11/ See note 8.

12/ See the Third Report at paragraphs 32 and 33.

Appendix

Summary recommendations of the third instalment of category D claims

Submitting Entity	Amount Claimed (US$)	Number of Claims Recommended	Number of claims Not Recommended for Payment	Amount of Compensation (US$)
Australia	736,769.70	2	1	167,664.83
Canada	3,503,652.98	16	4	562,930.19
Egypt	450,160.77	--	1	0.00
France	131,150.00	--	1	0.00
Germany	42,547.71	1	0	22,837.40
Hungary	38,266.00	1	--	38,266.00
Iceland	146,186.85	1	--	9,055.73
Ireland	3,730.00	--	1	0.00
India	27,301,610.73	40	8	1,501,591.52
Israel	18,963,200.00	7	--	236,713.64
Italy	224,803.00	2	3	51,712.79
Jordan	26,671,914.05	97	9 1/	5,145,257.40
Kuwait	5,667,709.81	90	15 2/	5,664,171.70
Lebanon	373,002.32	2	1	119,148.33
Philippines	106,342.82	1	--	48,957.18
Pakistan	71,169.55	1	--	35,584.80
Sudan	1,075,812.83	7	--	377,168.50
Sweden	94,735.00	1	--	94,735.00
Syria	194,989.00	--	1	0.00
United Kingdom	10,149,981.48	54	9 3/	3,132,729.79
United States	6,296,172.94	50	6	2,161,993.73
UNDP (Washington)	263,927.78	1	3	7,958.00
UNRWA (Gaza)	271,589.29	3	0	124,166.11
Total	102,779,424.61	377	63	19,502,642.64

1/ One claim from Jordan has been deferred.

2/ Six claims from Kuwait were deferred.

3/ One claim from the United Kingdom has been deferred.

Annex VI

Decision concerning the third instalment of individual claims for damages above $100,000 (category D claims) taken by the Governing Council of the United Nations Compensation Commission at its 88th meeting, held on 24 June 1999 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the Report and recommendations made by the Panel of Commissioners concerning the third instalment of individual claims for damages above US$100,000 (category "D" claims), covering four hundred and forty claims, [1]

1. Approves the recommendations made by the Panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country or international organization, as noted in the annex to the report, are as follows:

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Australia	2	1	736,769.70	167,664.83
Canada	16	4	3,503,652.98	562,930.19

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* Previously issued as document S/AC.26/Dec.68 (1999).

[1] The text of the report appears in document S/AC.26/1999/9. In conformity with the provisions on confidentiality in the Provisional Rules for Claims Procedure (article 30, paragraph 1, and article 40, paragraph 5), a table containing the breakdown of the amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government and individual organization seperately.

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Egypt	-	1	450,160.77	nil
France	-	1	131,150.00	nil
Germany	1	0	42,547.71	22,837.40
Hungary	1	-	38,266.00	38,266.00
Iceland	1	-	146,186.85	9,055.73
Ireland	-	1	3,730.00	nil
India	40	8	27,301,610.73	1,501,591.52
Israel	7	-	18,963,200.00	236,713.64
Italy	2	3	224,803.00	51,712.79
Jordan	97	9	26,671,914.05	5,145,257.40
Kuwait	90	15	5,667,709.81	5,664,171.70
Lebanon	2	1	373,002.32	119,148.33
Philippines	1	-	106,342.82	48,957.18
Pakistan	1	-	71,169.55	35,584.80
Sudan	7	-	1,075,812.83	377,168.50
Sweden	1	-	94,735.00	94,735.00
Syria	-	1	194,989.00	nil
United Kingdom	54	9	10,149,981.48	3,132,729.79
United States	50	6	6,296,172.94	2,161,993.73
UNPD (Washington)	1	3	263,927.78	7,958.00
UNRWA (Gaza)	3	0	271,589.29	124,166.11
Total	377	63	102,779,424.61	19,502,642.64

3. Reaffirms that when funds become available payments shall be made in accordance with the decisions of the Governing Council concerning the priority of payment and payment mechanisms,

4. Recalls that when payments are made, Governments and international organizations shall, pursuant to the terms of decision 18 [S/AC.26/Dec.18 (1994)], distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

/...

5. *Notes* that no recommendations have been made at this stage for eight claims referred to in the annex of the report,

6. *Requests* the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and copies of the report and the tables containing the amounts to be paid to each individual claimant to each respective Government and international organization.

Annex VII

Report and recommendations made by the Panel of Commissioners concerning the second instalment of E1 claims*

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* Previously issued as document S/AC.26/1999/10.

CONTENTS

	Paragraphs	Page
List of abbreviations		178
List of tables		179
Introduction	1 - 2	181
I. PROCEDURAL HISTORY	3 - 16	181
A. The nature and purpose of the proceedings	3 - 5	181
B. The procedural history of the claims	6 - 16	182
II. LEGAL FRAMEWORK	17 - 32	184
A. Applicable law and criteria	17	184
B. Liability of Iraq	18 - 22	185
C. Jurisdiction	23 - 29	186
D. Evidentiary requirements	30 - 32	188
III. CLAIM OF SAUDI ARABIAN OIL COMPANY (CLAIM NO: 4002627)	33 - 53	189
A. Introduction	33 - 35	189
B. Facts and contentions	36 - 44	189
C. Analysis and recommendations	45 - 53	191
IV. CLAIM OF ARABIAN OIL COMPANY (CLAIM NO: 4000987)	54 - 73	193
A. Introduction	54 - 55	193
B. Facts and contentions	56 - 64	193
C. Analysis and recommendations	65 - 73	195
V. CLAIM OF KUWAIT OIL COMPANY (CLAIM NO: 4004160)	74 - 308	197
A. The structure of Kuwaiti oil industry	74 - 79	197
B. Nature of claim	80 - 83	199
1. Facts and contentions	80 - 83	199
2. Claim presented	84	199
(a) Evidence presented in support	85 - 90	200
(b) Iraq's response	91 - 93	202
3. The Panel's general findings	94 - 99	202
C. Analysis of the claim	100 - 102	204
1. Oil fields	103 - 115	204
(a) South East oil fields	116 - 132	206
(i) Incurred costs	118	207
(ii) Adjustments to incurred costs	119 - 126	207
(iii) Future costs	127 - 130	209
(iv) Adjustments to future costs	131 - 132	210

(b) West oil fields . . . . 133 - 145 211
(i) Incurred costs 135 212
(ii) Adjustments to incurred costs . 136 - 139 212
(iii) Future costs . . . . 140 - 143 213
(iv) Adjustments to future costs . . 144 - 145 213
(c) North oil fields . . . . 146 - 159 214
(i) Incurred costs 148 215
(ii) Adjustments to incurred costs . 149 - 153 215
(iii) Future costs . . . . 154 - 157 216
(iv) Adjustments to future costs . . 158 - 159 217
(d) Wafra oil fields . . . . 160 - 183 217
(i) Incurred costs - KOC . . . . . 165 - 170 219
(ii) Incurred costs - JO 171 220
(iii) Adjustments to incurred costs - JO . . . . 172 - 173 220
(iv) Future costs . . . . 174 - 177 221
(v) Adjustments to future costs . . 178 - 183 222
2. The Ahmadi Township . . . . 184 - 200 223
(a) Incurred costs 188 224
(b) Future costs . . . . 189 - 193 224
(c) Adjustments to future costs . . . . 194 - 196 225
(d) Adjustments to residual value . . . 197 - 200 225
3. North and South tank farms . . . . . 201 - 213 226
(a) Incurred costs 204 227
(b) Adjustments to incurred costs . . . 205 - 209 227
(i) Betterment . . . . 205 - 206 227
(ii) Depreciation deduction . . . . 207 - 209 228
(c) Future costs . . . . 210 - 213 228
4. Marine facilities . . . . 214 - 331 229
(a) Incurred costs 220 230
(b) Future costs . . . . 221 - 227 230
(c) Adjustments to future costs . . . . 228 - 231 232
(i) Depreciation . . . . 228 - 231 232
5. Ras-Al-Zoor . . . . 232 - 254 233
(a) Onshore Facility . . . . 239 - 248 234
(b) Offshore Facility storage charges . 249 - 251 236
(c) Engineering spares . . . . 252 - 254 237
6. Projects under construction/ consideration . . . . 255 - 267 237
(a) Gas line project . . . . 261 - 263 239
(b) Desalter Phase IV project . . . . . 264 - 267 239
7. Well Blowout Control programme and other physical assets . . . . 268 - 292 240
(a) Well blowout control costs . . . . . 275 - 280 241
(b) Other physical assets . . . . 281 - 288 243

(c) Residual values . . . . 289 - 292 244
  (i) Heavy plant vehicles and other assets 290 244
  (ii) Modular buildings . . . . 291 - 292 245

8. Post Well Capping - Al Tameer . . . 293 - 298 245
9. Phase III . . . . 299 - 303 246
10. Reconstruction of the Magwa road/ replacement of crude line no. 5 . . 304 - 307 247
11. Summary of recommendation 308 248

VI. CLAIM OF KUWAIT PETROLEUM CORPORATION (CLAIM NO: 4003198) . . . . 309 - 352 250
  A Nature of claim . . . . 309 - 311 250
    1. Facts and contentions . . . . 309 - 311 250
    2. Claim presented 312 250
    (a) Evidence presented in support . . . 313 251
    (b) Iraq's response . . . . 314 - 317 251
  B. Analysis of the claim . . . . 318 - 352 252
    1. The stock at KOC premises . . . . . 318 - 328 252
    2. The stock at KNPC premises . . . . . 329 - 338 254
    3. The sulphur contract . . . . 339 - 344 256
    4. Fixed Assets . . . . 345 - 351 257
    5. Summary of recommendation 352 259

VII. CLAIM OF SAUDI ARABIAN TEXACO (CLAIM NO: 4000604) 353 - 489 260
  A. SAT's role in the Saudi Arabian oil industry . . . . 353 - 357 260
  B. Facts and contentions . . . . 358 - 374 261
    1. Nature of the claim 358 261
    2. Claim presented . . . . 359 - 370 261
    (a) Evidence presented in support 367 263
    (b) Iraq's response . . . . 368 - 370 263
    3. The Panel's general findings . . . . 371 - 374 264
  C. Analysis of the claim . . . . 375 - 469 265
    1. Physical assets . . . . 375 - 427 265
    (a) Mina Saud . . . . 379 - 407 266
    (b) Wafra . . . . 408 - 427 273
    2. Business losses . . . . 428 - 465 277
    3. Extraordinary expenses: payments to others . . . . 466 - 489 286
    (a) Costs of evacuating and relocating SAT personnel . . . . 470 - 472 288
    (b) Costs of relocating SAT's administrative facilities . . . . 473 - 475 288
    (c) Costs of terminating or retiring SAT employees . . . . 476 - 478 289

(d) Costs of maintaining SAT's inactive work force . . . . 479 - 481 289
(e) Compensation for personal effects losses and employee dislocation . . 482 - 483 290
(f) Costs of well blowout control, oil cleanup and ordnance removal . . . 484 - 485 290
(g) Costs of re-electrification of Mina Saud . . . . 486 - 488 291
4. Summary of recommendation 489 292

VIII. OTHER ISSUES . . . . 490 - 506 293
A. Currency exchange rate . . . . 490 - 491 293
B. Interest . . . . 492 - 504 293
C. Claim preparation costs . . . . 505 - 506 295

IX. RECOMMENDATIONS 507 296

List of abbreviations

Name	Defined
Arabian Oil Company Limited	"Arabian Oil"
The Arabian American Oil Company	"ARAMCO"
Authorization for Expenditure	"AFE"
Barrels per day	"BPD"
Cost and Commitment Accounts	"COCO"
Discounted Cash Flow	"DCF"
General Petroleum Marketing Organization of the Republic of Iraq	"GPMO"
General Petroleum and Minerals Organization of the Kingdom of Saudi Arabia	"Petromin"
Joint Operation Agreement	"JO"
Kuwait National Petroleum Corporation	"KNPC"
Kuwait Petroleum Corporation	"KPC"
Kuwait Oil Company	"KOC"
Kuwait Ministry of Electricity and Water	"MEW"
Kuwait Santa Fe for Engineering and Petroleum Projects Company	"Kuwait Santa Fe"
Partitioned Neutral Zone	"PNZ"
The Khafji and Hout fields in the offshore portion of the PNZ	"PNZ Off-Shore Fields"
Saudi Arabian Texaco	"SAT"
Saudi Arabian Oil Company	"Saudi Aramco"
State Oil Marketing Organisation of Iraq	"SOMO"
Well Blowout Control	"WBC"

List of Tables

Page
1. The second instalment of E1 claims 181
2. Claims of Kuwait Oil sector companies 198
3. Claim of Kuwait Oil Company: UNCC Claim No: 4004160 ("Physical Assets Claim") 200
4. South East oil fields claim amounts 207
5. South East oil fields recommended compensation 211
6. West oil fields claim amounts 212
7. West oil fields recommended compensation 214
8. North oil fields claim amounts 215

9. North oil fields recommended compensation 217
10. Wafra oil fields claim amounts 219
11. Wafra oil fields recommended compensation 223
12. Ahmadi Township claim amounts 224
13. Ahmadi Township recommended compensation 226
14. North and South tank farms claim amounts 227
15. North and South tank farms recommended compensation . . . 229
16. Marine facilities claim amounts 230

17. Marine facilities recommended compensation 232
18. Ras Al-Zoor/Southern gas project claim amounts 234
19. Ras Al-Zoor/Southern gas project recommended compensation 237
20. Projects under construction/consideration claim amounts . 239
21. Projects under construction/consideration recommended compensation 240
22. WBC costs and other physical assets claim amounts 241
23. WBC costs and other physical assets recommended compensation 245
24. Summary - Kuwait oil company recommended compensation . . 249
25. Kuwait Petroleum Corporation claim amounts 251
26. Kuwait Petroleum Corporation claim amounts 258
27. Kuwait Petroleum Corporation recommended compensation . . 259
28. Comparison of SAT's original and amended claims 261
29. SAT's claim for physical assets at Mina Saud 267
30. Physical assets at Mina Saud recommended compensation . . 272
31. SAT's claim for physical assets at Wafra 273
32. Physical assets at Wafra recommended compensation 277
33. SAT's business loss claims - recommended compensation . 286
34. Extraordinary expenses claim amounts 287

/...

35. Extraordinary expenses - recommended compensation . . . 292
36. Saudi Arabian Texaco - recommended compensation 292
37. Kuwait Oil Company recommended dates of loss 294
38. Kuwait Petroleum Corporation recommended dates of loss . 295
39. Saudi Arabian Texaco - recommended dates of loss 295
40. Summary of the claim amounts and the Panel's recommended compensation for each claim 296

Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Allan Philip (Chairman), Bola A. Ajibola and Antoine Antoun, at its sixteenth session, on 22 March 1995. The Panel was directed to review claims filed with the Commission on behalf of corporations and other legal entities involved in the oil and gas and related industries ("Category 'E1' claims"). This review was to be conducted in accordance with the relevant Security Council resolutions, Governing Council decisions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10)(the "Rules")and relevant rules of international law. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning the second instalment of "E1" claims, which consists of five claims filed by corporations or other legal entities (the "Claimants") described below, each of which seeks compensation for loss, damage or injury allegedly arising out of Iraq's unlawful invasion and subsequent occupation of Kuwait on 2 August 1990.

2. The claims included in this report are listed in the following table. The claim amounts shown in this table are the total of all amounts claimed in all filings made with the claim.

Table 1. The second instalment of E1 claims

Claim	Claim number	Claim amount (US$)	Submitting country
Saudi Arabian Oil Company	4002627	4,845,552,637	Saudi Arabia
Arabian Oil Company	4000987	5,836,307,964	Japan
Kuwait Oil Company	4004160	2,512,896,177	Kuwait
Kuwait Petroleum Corporation	4003198	124,396,824	Kuwait
Saudi Arabian Texaco Inc	4000604	1,519,952,314	United States of America
Total		14,839,105,916	

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

3. The role and functions of panels of Commissioners operating within the framework of the Commission are set forth in the Secretary-General's

report to the Security Council dated 2 May 1991. In his report, the Secretary-General described the function of the Commission as follows:

> "... The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element.
>
> "The processing of claims will entail the verification of claims and evaluation of losses and the resolution of any disputed claims. The major part of this task is not of a judicial nature; the resolution of disputed claims would, however, be quasi-judicial. It is envisaged that the processing of claims would be carried out principally by the commissioners. Before proceeding to the verification of claims and evaluation of losses, however, a determination will have to be made as to whether the losses for which claims are presented fall within the meaning of paragraph 16 of Security Council resolution 687 (1991), that is to say, whether the loss, damage or injury is direct and as a result of Iraq's unlawful invasion and occupation of Kuwait." [1]

4. Panels were entrusted with three tasks. First, panels were required to determine whether the various types of losses alleged by claimants were within the jurisdiction of the Commission. Second, panels were required to verify whether the alleged losses that were in principle compensable had in fact been incurred by a given claimant. Third, panels were required to determine in what amounts these compensable losses were incurred.

5. The Panel uses the term "overstated" in this report to convey only that it disagrees with a claimant's stated claim amount and that, in its opinion, the claim amount as stated is larger than the amount supported by the evidence.

B. The procedural history of the claims

6. On 31 December 1997, the Panel issued its first procedural orders relating to the claims. In view of the complexity of the issues raised, the volume of the documentation underlying the claims and the amount of compensation sought by the claimants, the Panel classified each of the claims as "unusually large or complex" claims within the meaning of article 38(d) of the Rules. [2]

7. In its review of the claims, the Panel has employed the full range of investigative procedures available to it under the Rules. For some claims, the Panel has also been assisted by the responses of the claimants to interrogatories and to requests for documents. Iraq has also filed replies to the claims, which include specific comments on and analyses of the claimed losses as well as legal argument on the compensability of particular loss types. In its replies, Iraq addressed most of the individual claim elements submitted by the claimants. Iraq generally provided argument and, in some instances, evidence to support its positions. The Panel notes that, in taking full advantage of the opportunity to participate in the resolution of these claims, Iraq has been helpful to the Panel in its work.

8 Because of the complex nature and subject matter of the claims, the Panel engaged consultants with expertise in asset valuation and forensic accounting, including estimation of business losses to assist in determining the appropriate valuation of those claim elements that were found to be compensable.

9. The initial work of the secretariat and the consultants yielded specific legal recommendations and questions and identified areas of the claims for which further factual development or evidence was required. To address this need, the Panel, assisted by the secretariat and the consultants, prepared questions and formal requests for additional evidence for the claimants. Such questions and requests (collectively referred to herein as "interrogatories") typically sought clarification of statements in the claim or additional documentation regarding the claimed losses. The Panel issued procedural orders dated 20 February 1998, in which the Panel invited the claimants to respond on specified dates to the interrogatories annexed to the procedural orders.

10. The Panel instructed the secretariat to transmit to Iraq the documents filed by the claimants in the claims and invited Iraq to submit by 30 June 1998 its replies to the claims, together with any documentation Iraq might wish to rely on in the present proceedings. Iraq was also requested to submit its comments on the interrogatories submitted to and responses received from the claimants.

11. In March of 1998, the claimants began to submit their responses to the interrogatories. Pursuant to the procedural order of 20 February 1998, the claimants' responses were transmitted to Iraq upon their receipt. Iraq submitted its replies to the statements of claim in June 1998.

12. After reviewing the claims, the claimants' responses to the interrogatories and the evidence submitted by the claimants, the Panel directed its consultants to analyse the claims, to report their opinions on the appropriate valuation of each of the compensable claim elements and to identify the evidence supporting those opinions. To perform this task, the

consultants spent several months reviewing the entire file on each of the referred claims, including the evidence and interrogatory responses, and consulting with the Panel and the secretariat.

13. In addition, the consultants reviewed the submissions by Iraq that focused on valuation issues.

14. In August 1998, the consultants began presentation of their opinions to the Panel in a series of written reports and appearances before the Panel. The Panel reviewed these reports and, over the course of several Panel meetings, discussed these with the consultants. Where appropriate, the Panel made further inquiries of the claimants or the consultants.

15. The Panel is satisfied that the consultants' reports were prepared to a high professional standard and are free from any bias in favour of either the claimants or Iraq.

16. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work. The Panel likewise does not recite in detail its valuation of each particular claim element while ensuring that this report clearly indicates those parts of the claims that were found to be outside the jurisdiction of the Commission. The amounts reported as recommended compensation for each claim element represent the value of that portion of the claim element that could be verified. The Panel's adjustments as reported herein are then calculated as the difference between the total claim amount for that claim element as stated by the claimant and the amount which could be verified by the Panel. Any arithmetic or typographic error in the claimant's stated claim amount is thus accounted for in the Panel's adjustment.

II. LEGAL FRAMEWORK

A. Applicable law and criteria

17. The law to be applied by the Panel is set out in article 31 of the Rules, which provides as follows:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

B. Liability of Iraq

18. According to paragraph 16 of Security Council resolution 687 (1991),

"... Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage ... or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait". The Panel notes that, when making Security Council resolution 687 (1991), the Security Council acted under Chapter VII of the United Nations Charter, which permits it to exercise its powers under that Chapter to maintain and restore international peace and security. The Security Council also acted under Chapter VII and under article 29 of the United Nations Charter when making resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of Security Council resolution 687 (1991). Given these provisions, the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved and is not subject to review by the Panel.

19. The Governing Council has given some further guidance on what constitutes "direct loss, damage or injury" for which Iraq is liable under Security Council resolution 687 (1991). Paragraph 21 of Governing Council decision 7 is the seminal rule on "directness" for category "E" claims, and it provides, in relevant part, that compensation is available:

> "... with respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention." [5]

20. The list of possible causes of "direct loss" in paragraph 21 is not exhaustive and leaves open the possibility that there may be causes other than those enumerated. Decision 15 of the Governing Council confirms this: "[t]here will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait".[4] Should that be the case, the claimants will have to show that a loss which was not suffered as a result of one of the five categories of events in paragraph 21 is nevertheless a "direct" one.

21. While the language "as a result of" contained in paragraph 21 is not defined further in decision 7, Governing Council decision 9 provides guidance as to what may be considered to constitute "losses suffered as a result of" Iraq's unlawful invasion and occupation of Kuwait.[5]

22. Thus, decisions 7 and 9 provide guidance to the Panel as to how the "direct loss" requirement must be interpreted. It is against this background that the Panel will examine the claims discussed in this report to determine whether, with respect to each, the requisite causal link - a "direct loss" - is present.

C. Jurisdiction

23. With respect to the clause in paragraph 16 of Security Council resolution 687 (1991) relating to the debts and obligations of Iraq "... arising prior to 2 August 1990 ...", the Panel refers to the Report and Recommendations Made By The Panel Of Commissioners Concerning The First Instalment of "E2" Claims (S/AC.26/1998/7)annexed to Governing Council decision 53 [S/AC.26/Dec.53 (1998)] wherein the "E2" Panel concluded that the "arising prior to" clause was intended to exclude from the jurisdiction of the Commission the foreign debt of Iraq that existed at the time of Iraq's 2 August 1990 invasion of Kuwait. Having studied the normal business practices in Iraq prior to that country's accumulation of a significant amount of foreign debt during the course of the Iran-Iraq War (1980-1988), the "E2" panel concluded that foreign contracting parties operating in Iraq at that time could generally expect to be paid within one to three months of the performance of its obligation.

24. The "E2" Panel therefore found that:

> "In case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990." (S/AC.26/1998/7, para. 90).

/...

25. The "E2" Panel applied the above-referenced finding to specific factual situations including claims based on deferred payment arrangements where the Panel concluded that, regardless as to whether deferred payment arrangements may have created new debts and obligations on the part of Iraq under a particular legal system, they did not do so for the purposes of Security Council resolution 687 (1991). Accordingly, the "E2" Panel concluded that such claims based on deferred payment arrangements do not constitute new debts as of their date that are separate and distinct from the original contracts and are therefore outside the jurisdiction of the Commission.

26. The "E2" Panel also considered claims where the claimants shipped goods to Iraq pursuant to contracts entered into prior to 2 August 1990. In such cases, "performance" was taken to mean the delivery of goods pursuant to the terms of the contracts. Applying the "arising prior to" clause, the "E2" Panel found that:

> "[W]here claimants had completed performance (i.e., delivered the goods, as evidenced by appropriate documentation) more than three months prior to 2 August 1990, claims for the recovery of amounts owed by Iraq for that performance shall be considered to have arisen prior to 2 August 1990 and, as such, outside the jurisdiction of this Commission. In cases where deliveries of goods were made within three months prior to 2 August 1990, claims for compensation for amounts owed by Iraq for such performance meet the 'arising prior' to test". (S/AC.26/1998/7, paragraph 105).

27. The Panel has analysed the "E2" Panel's findings and adopts its conclusion for the purposes of the review of these claims. Accordingly, the Panel finds that the terms "debts or obligations arising prior to 2 August 1990" means a debt or an obligation that is based on work performed or services rendered prior to 2 May 1990.

28. The Panel wishes to point out in this connection that, although it is true that during the occupation of Kuwait, Iraq purported to repudiate certain debts, which may include the claims discussed within this report, it follows from paragraph 17 of Security Council resolution 687 (1991) and Iraq's acceptance thereof that such repudiation is without effect and that such debts still exist.

29. The Panel also emphasizes that in reviewing such claims before it, which are within its jurisdiction, the Panel will analyse the claims in the light of the particular, relevant facts and circumstances of each claim, in particular, with respect to the question whether, as required in paragraph 16 of Security Council resolution 687 (1991), there is a direct loss resulting from Iraq's unlawful invasion and occupation of Kuwait. The Panel will be particularly watchful for claims wherein the claimants may be

able to demonstrate a long standing practice, dating back prior to 1980, of granting Iraqi buyers and contract parties long or deferred payment terms.

D. Evidentiary requirements

30. Article 35(1) of the Rules provides general guidance on the submission of evidence by a claimant:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

31. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear that with respect to business losses there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded. [6]

32. All corporations filing category "E" claims were required to submit with their claim forms "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". [7] In addition, claimants were instructed to include in the Statement of Claim the following particulars:

> "(a) The date, type and basis of the Commission's jurisdiction for each element of loss ...;
>
> (b) The facts supporting the claim;
>
> (c) The legal basis for each element of the claim;
>
> (d) The amount of compensation sought, and an explanation of how this amount was arrived at." [8]

III. CLAIM OF SAUDI ARABIAN OIL COMPANY (CLAIM NO: 4002627)

A. Introduction

33. Pursuant to arrangements described below, the Kingdom of Saudi Arabia ("Saudi Arabia") entered into a crude oil exchange contract with an agency of the Government of the Republic of Iraq ("Iraq"). Under this contract, Saudi Arabia agreed to supply a specified average daily quantity of oil to Iraq for a period of approximately one year. In return, the Iraqi contracting agency agreed to supply Iraqi oil of equivalent value to Saudi Arabia during specified later periods. The parties later extended the exchange contract through four letter agreements, in each case agreeing that Saudi Arabia would continue to supply oil for a further year at a specified average daily quantity and extending the time for performance of the Iraqi agency's reciprocal obligation to supply oil. The exchange contract and these letter agreements are collectively referred to as the "Aramco Barter Agreement".

34. The Arabian American Oil Company ("Aramco") was directed to perform Saudi Arabia's delivery obligations under the Aramco Barter Agreement. Aramco was established under the laws of the State of Delaware, United States of America. Aramco operated an oil concession in Saudi Arabia prior to the acquisition of 100 per cent of its interests by Saudi Arabia in the 1970s.

35. With effect from 1 January 1989, Saudi Arabia transferred the assets and liabilities of Aramco to the Saudi Arabian Oil Company ("Saudi Aramco"). Saudi Aramco is a limited liability company established under the laws of Saudi Arabia on 13 November 1988. It is wholly owned by Saudi Arabia and its purpose is to engage in activities relating to all aspects of the oil industry and other related industries in Saudi Arabia and elsewhere.

B. Facts and contentions

36. Saudi Aramco files this claim on its own behalf, in its capacity as the successor in interest to Aramco, and on behalf of the General Petroleum and Minerals Organisation of the Kingdom of Saudi Arabia ("Petromin"), the governmental agency on whose behalf Aramco performed the Aramco Barter Agreement. Saudi Aramco alleges that Iraq has repudiated its debts under this agreement as a result of Iraq's unlawful invasion and occupation of Kuwait. Saudi Aramco further alleges that Iraq has never performed its return obligations under the Aramco Barter Agreement and requests compensation for the monetary value of the oil which it considers that Iraq should have delivered pursuant thereto ("Aramco Barter Claim"). Saudi Aramco seeks compensation in the amount of US$4,845,552,637.40 plus unquantified interest.

37. The claim amount includes (a) US$4,643,831,487.30, which is the value of the oil supplied through 31 December 1987 and (b) US$201,721,150.10, which is the asserted value of the oil supplied after that date. Saudi Aramco asserts that the Iraqi Ministry of Oil has confirmed the value of oil supplied prior to 1988 to Aramco's auditors in a letter and provides a copy of that letter.

38. By an exchange contract dated 7 December 1982 entered into between Petromin and the General Petroleum Marketing Organisation of the Republic of Iraq ("GPMO"), Petromin agreed to supply GPMO with an average of 184,000 barrels of Saudi Arabian oil per day for one year beginning 1 January 1983. In return, GPMO agreed to supply Petromin with Iraqi oil of equivalent value at a similar average daily quantity beginning approximately on 1 January 1984.

39. In 1987 the State Oil Marketing Organisation of Iraq ("SOMO") became the successor to GPMO under the Aramco Barter Agreement (GPMO and its successor are collectively referred to herein as "SOMO").

40. In a series of four letter agreements executed on 25 December 1983, 1 January 1985, 11 February 1986 and 24 November 1987, the parties amended the exchange contract. In each letter agreement, Petromin agreed to supply further oil to SOMO for periods of approximately one additional year, and SOMO agreed to repay the oil during a later period. The first letter agreement called for additional supplies at an average daily quantity of 184,000 Barrels Per Day ("BPD"), while the latter three called for an average daily quantity of 60,000 BPD. Each letter agreement also postponed the commencement of SOMO's obligations to return the oil.

41. Under the Aramco Barter Agreement, the parties calculated the value of the crude shipped by Petromin with reference to posted Saudi Arabian prices for crude of like grades.

42. Aramco made Petromin's deliveries on Petromin's behalf. Aramco recorded the value of the delivered crude in its books of account as a receivable from Petromin. Petromin's receivable from SOMO was later transferred to Saudi Aramco pursuant to a letter dated 21 March 1990. The amount has since been recorded in Saudi Aramco's accounts as a receivable from SOMO.

43. Petromin's obligations under the last letter agreement terminated on 31 December 1988, by which time it had completed performance of its obligations under the exchange contract and all of the letter agreements and had supplied SOMO with oil valued at US$4,845,552,637, the amount of this claim. Under the final letter agreement, SOMO was required to begin returning oil to Petromin on or around 1 January 1989. Saudi Aramco alleges that SOMO has never made any of the deliveries required by the Aramco Barter Contract

44. Following the launch of Operation Desert Storm on 16 and 17 January 1991, the Iraqi Revolutionary Command issued a statement that it repudiated all liabilities to Saudi Arabia, because the latter had joined in that operation. Saudi Aramco claims that by this general repudiation, Iraq intended to repudiate its obligations under the Aramco Barter Agreement. As a result, Saudi Aramco claims that its receivable from SOMO will go unpaid.

C. Analysis and recommendations

45. The Panel's first task is to determine whether the Aramco Barter Claim is within the jurisdiction of the Commission. The Security Council in resolution 687 (1991) confers jurisdiction on the Commission over claims against Iraq for certain losses that are the direct result of Iraq's unlawful invasion and occupation of Kuwait. This jurisdiction is qualified, however, by the following phrase in paragraph 16 of that resolution:

> "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms".

46. Because the Aramco Barter Claim arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by para. 16 of Security Council resolution 687 (1991).

47. The Security Council has not defined "debts and obligations" nor has it provided guidelines on when a debt arises.

48. The term "debts and obligations" has, however, been defined by the "E2" Panel, as "obligations to make future payments, in cash or in kind, in specified or determinable amounts and with fixed or determinable rates of interest (which may be zero)".[9] The Panel finds that this definition accurately conveys the meaning of the term.

49. The Panel also finds that the plain meaning of the term "debts and obligations" must include any reciprocal obligation assumed by the debtor as inducement for the receipt of something of value. Thus, an obligation under a barter arrangement, such as that presented here, constitutes a debt or obligation as those terms are used by the Security Council. Accordingly, the Panel finds that Iraq's obligations under the Aramco Barter Agreement are "debts and obligations" as those terms are used in Security Council resolution 687 (1991).

50. Next, the Panel must determine when this debt arose. As stated in section II.C., *supra*, the Panel finds that the Security Council's intention when inserting the "arising prior to" clause in Security Council resolution 687 (1991) was to exclude from the jurisdiction of the Commission certain debts and obligations existing prior to Iraq's invasion of Kuwait, even if those debts had been rescheduled. Such debts formed part of Iraq's foreign debt that had accumulated by the time of Iraq's unlawful invasion of Kuwait and were thus to be excluded from the jurisdiction of the Commission by Security Council resolution 687 (1991).

51. The Panel must therefore determine when Iraq's obligations under the Aramco Barter Agreement arose. SOMO's obligation to deliver oil under that Agreement arose not later than the date on which Aramco fulfilled Petromin's obligations under the Aramco Barter Agreement to deliver oil to SOMO. As demonstrated in paragraph 43, *supra*, the last of Petromin's supply obligations was fulfilled by Aramco at the latest by 31 December 1988. The Panel therefore finds that SOMO's obligations under the Aramco Barter Agreement is a debt or obligation of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16 of Security Council resolution 687 (1991). As a result, the Aramco Barter Claim is outside the jurisdiction of the Commission.

52. Accordingly, the Panel need not decide whether there exists a causal relationship between Iraq's unlawful invasion of Kuwait and its failure to fulfill its obligation under the Aramco Barter Agreement.

53. Because the Panel finds that the Commission lacks jurisdiction over the Aramco Barter Claim, it recommends that no compensation be awarded for this claim.

IV. CLAIM OF ARABIAN OIL COMPANY (CLAIM NO: 4000987)

A. Introduction

54. Pursuant to arrangements described below, the Arabian Oil Company Limited ("Arabian Oil") entered into a series of crude oil exchange contracts with an agency of the Government of the Republic of Iraq ("Iraq") in the 1980s. Under these contracts, Arabian Oil agreed to supply a specified average daily quantity of oil to Iraq for a period of approximately one year. In return, the Iraqi contracting agency agreed to supply Iraqi oil of equivalent value to Arabian Oil during specified later periods. The exchange contracts are collectively referred to as the "Arabian Oil Barter Agreement".

55. Arabian Oil alleges that it has completed all of its obligations under the Arabian Oil Barter Agreement but that Iraq has never performed its return obligations, and it requests compensation for the monetary value of the oil that it claims Iraq should have delivered pursuant thereto ("Arabian Oil Barter Claim"). Arabian Oil alleges that Iraq has repudiated its debts under this agreement as a result of Iraq's unlawful invasion and occupation of Kuwait.

B. Facts and contentions

56. Arabian Oil is a Japanese corporation involved in the exploration for, and production and distribution of, petroleum in the Persian Gulf area and elsewhere. The Governments of Kuwait and Saudi Arabia each own 10 per cent of Arabian Oil. Arabian Oil's largest customers including large Japanese utilities, also own significant percentages of Arabian Oil's shares.

57. In 1922, a Neutral Zone was established between Saudi Arabia and the State of Kuwait ("Kuwait") in a 2000 square mile area between the two States. Subsequently, a treaty established that both States held an undivided interest in the mineral resources in the Neutral Zone and equal rights in the administration of those resources. Both States thereafter granted concessions to foreign companies to operate in the Neutral Zone. On July 1965, a Partition Treaty between the two States divided the Neutral Zone into two partitioned areas each subjected to the sovereignty of one State. The Neutral Zone then became known as the Partitioned Neutral Zone ("PNZ"). Although the treaty divided the areas in which each State had an interest, it did not alter the sub-surface rights of the party States which continued to be owned in undivided 50 per cent shares.

58. In particular, Saudi Arabia and Kuwait each owned an undivided 50 per cent interest in the Khafji and Hout fields in the offshore portion of the PNZ ("PNZ Off-Shore Fields"). They granted Arabian Oil an undivided 40 per

cent interest in petroleum produced from these fields. The working interests in the PNZ Off-Shore Fields are thus owned 30 per cent by Kuwait, 30 per cent by Saudi Arabia, and 40 per cent by Arabian Oil. Arabian Oil is the operator of the PNZ Off-Shore Fields under a joint operating agreement entered into with Saudi Arabia and Kuwait. Acting on behalf of the joint interests, Arabian Oil undertakes the extraction, processing, and marketing of the petroleum produced from the PNZ Off-Shore Fields.

59. In an exchange contract dated 20 June 1983 entered into between Arabian Oil, acting on behalf of the joint interests in the PNZ Off-Shore Fields, and SOMO, Arabian Oil agreed to supply SOMO with an average of 248,000 barrels of oil per day for one year beginning 1 February 1983. In return, SOMO agreed to supply Arabian Oil with Iraqi oil of equivalent value at a similar average daily quantity over a two year period beginning approximately on 1 January 1985.

60. In a series of four further exchange contracts executed on 12 April 1984, 14 February 1985, 29 August 1986 and 3 February 1988, each of which reference the original 20 June 1983 contract for certain terms and conditions, the parties agreed to additional exchanges. In each of these further contracts, Arabian Oil agreed to supply an additional 248,000 BPD of oil to SOMO for a period of approximately one additional year, and SOMO agreed to repay the oil at a later date by supplying Iraqi oil of equivalent value at a similar average daily quantity, typically over a period of two years.

61. All of the written agreements making up the Arabian Oil Barter Agreement had substantially the same terms on the valuation of oil as the 20 June 1983 exchange contract. Under the Arabian Oil Barter Agreement, the parties calculated the value of the oil shipped by Arabian Oil with reference to "the relevant Government Selling Price" for crude oil of like grades.

62. Arabian Oil's obligations under the Arabian Oil Barter Agreement terminated on 31 December 1988, by which time it had completed performance of its obligations under all of the agreements and had supplied SOMO with oil valued at US$5,836,307,964, the amount of this claim. Arabian Oil asserts that SOMO has acknowledged this debt in a written communication to Arabian Oil and provides a copy of that communication.

63. Under the 20 June 1983 exchange agreement, SOMO was required to begin returning oil to Arabian Oil on or around 1 January 1985. Arabian Oil alleges that SOMO has never made any of the deliveries required by the Arabian Oil Barter Contract. It appears that SOMO's obligation to make its reciprocal supplies was extended or delayed, but the claimant failed to provide the relevant documents.

64. Arabian Oil files this claim on its own behalf and on behalf of the joint interest holders, Kuwait and Saudi Arabia, on whose behalf Arabian Oil executed and performed the Arabian Oil Barter Agreement. Evidence of the consent of Kuwait and Saudi Arabia to this arrangement was submitted with the claim.

C. Analysis and recommendations

65. The Panel's first task is to determine whether the Arabian Oil Barter Claim is within the jurisdiction of the Commission. The Security Council, in resolution 687 (1991), confers jurisdiction on the Commission over claims against Iraq for certain losses that are the direct result of Iraq's unlawful invasion and occupation of Kuwait. This jurisdiction is qualified, however, by the following phrase in paragraph 16 of that resolution:

> "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms."

66. Because the Arabian Oil Barter Claim arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by article 16 of Security Council resolution 687 (1991).

67. The Security Council has not defined "debts and obligations" nor has it provided guidelines on when a debt arises.

68. The term "debts and obligations" has, however, been defined by the "E2 Panel", as "obligations to make future payments, in cash or in kind, in specified or determinable amounts and with fixed or determinable rates of interest (which may be zero)". [10] The Panel finds that this definition accurately conveys the meaning of the term.

69. The Panel also finds that the plain meaning of the term "debts and obligations" must include any reciprocal obligation assumed by the debtor as inducement for the receipt of something of value. Thus, an obligation under a barter arrangement, such as that presented here, constitutes a debt or obligation as those terms are used by the Security Council. Accordingly, the Panel finds that Iraq's obligations under the Arabian Oil Barter Agreement are "debts and obligations" as those terms are used in Security Council resolution 687 (1991).

70. Next, the Panel must determine when this debt arose. As stated in section II.C., supra, the Panel finds that the Security Council's intention

when inserting the "arising prior to" clause in Security Council resolution 687 (1991) was to exclude from the jurisdiction of the Commission certain debts and obligations existing prior to Iraq's invasion of Kuwait, even if those debts had been rescheduled. Such debts formed part of Iraq's foreign debt that had accumulated by the time of Iraq's unlawful invasion of Kuwait and was thus to be excluded from the jurisdiction of the Commission by Security Council resolution 687 (1991).

71. The Panel must therefore determine when SOMO's obligations under the Arabian Oil Barter Agreement arose. SOMO's obligation to deliver oil under that Agreement arose not later than the date on which Arabian Oil fulfilled its obligations under the Arabian Oil Barter Agreement to deliver oil to SOMO. As demonstrated in paragraph 62, supra, the last of Arabian Oil's supply obligations was fulfilled at the latest by 31 December 1[illegible]8. The Panel therefore finds that SOMO's obligation under the Arabian Oil Barter Agreement is a debt or obligation of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16 of Security Council resolution 687 (1991). As a result, the Arabian Oil Barter Claim is outside the jurisdiction of the Commission.

72. Accordingly, the Panel need not decide whether there exists a causal relationship between Iraq's unlawful invasion and its failure to fulfill its obligation under the Arabian Oil Barter Agreement.

73. Because the Panel finds that the Commission lacks jurisdiction over the Arabian Oil Barter Claim, it recommends that no compensation be awarded for this claim.

V. CLAIM OF KUWAIT OIL COMPANY (CLAIM NO: 4004160)

A. The structure of Kuwaiti oil industry

74. All of the oil and gas resources in Kuwait, with the exception of those in the PNZ, are owned by Kuwait.[11] In Kuwait, the main onshore areas of oil and gas operations are the South East oil fields, the West oil fields and the North oil fields. The Burgan area in the South East oil fields is the most important of Kuwait's eight producing onshore fields and one of the largest in the world.

75. In the PNZ, Kuwait is involved in oil and gas operations both onshore and offshore. Kuwait operates onshore in an area known as Wafra, which includes the Wafra, South Umm Gudair and South Fuwaris oil fields. As discussed in paragraphs 57-58, supra , in 1958, Kuwait granted a concession to Arabian Oil to explore and produce oil from the continental shelf offshore of the PNZ. Kuwait and Arabian Oil participate in 60 and 40 per cent shares, respectively, of Kuwait's undivided 50 per cent interest in the PNZ Offshore Fields. In addition, Kuwait Petroleum Company ("KPC") owns a 10 per cent share holding in Arabian Oil.

76. In 1975, Kuwait Oil Company ("KOC"), a company wholly owned by Kuwait, was incorporated to take over all operations relating to oil and gas in Kuwait from Kuwait Oil Company Limited, a company incorporated in the United Kingdom. In 1978, Kuwait granted KOC power to carry out the exploration and production of oil and gas in the PNZ. KOC conducts joint operations ("JO") in the PNZ with Saudi Arabian Texaco ("SAT"), the company that holds Saudi Arabia's concession to operate in the PNZ.

77. In 1980, Kuwait reorganized its petroleum industry and established KPC to bring all operations relating to oil and gas under one corporate umbrella. KPC became the holding company for a number of State-owned companies, each with a specific area of responsibility. KPC's wholly owned subsidiaries include:

(a) Kuwait Oil Company, which explores for and produces petroleum;

(b) Kuwait National Petroleum Company, which refines crude oil and processes its associated gases;

(c) Petrochemical Industries Company, which produces and markets fertilizers and petrochemicals;

(d) Kuwait Oil Tanker, which is responsible for the transport of crude oil, petroleum products and liquefied gas;

/...

(e) Kuwait Petroleum International, which operates downstream acquisitions in Europe and Asia from its London headquarters; and

(f) Kuwait Foreign Petroleum Exploration Company, which is responsible for overseas oil and gas exploration and development.

78. There are two other companies related to KPC. They are Kuwait Santa Fe for Engineering and Petroleum Projects Company ("Kuwait Santa Fe") and Kuwait Drilling Company. KPC indirectly controls Kuwait Santa Fe through its ownership of Santa Fe International Corporation, which is the parent corporation of Kuwait Santa Fe. KPC also owns an indirect minority interest in Kuwait Drilling Company.

79. In the aftermath of Iraq's unlawful invasion and occupation of Kuwait, many of these companies filed claims with the Commission. The following table summarizes the category "E1" claims filed by Kuwait oil sector companies.

Table 2. Claims of Kuwait oil sector companies

UNCC claim number	Name of claimant	Amount claimed (US$)
1798909†	Kuwait Oil Company	951,631,000.00
4004160*	Kuwait Oil Company	2,512,896,177.00
4003198*	Kuwait Petroleum Corporation	124,396,824.00
4004439	Kuwait Petroleum Corporation	6,640,516,049.00
4003197	Kuwait Petroleum Corporation	14,973,000,000.00
4004232	Kuwait Petroleum Corporation	24,221,881.00
4003070	Kuwait National Petroleum Company	2,347,618,003.46
4003069	Petrochemical Industries Company	284,037,145.33
4003068	Kuwait Oil Tanker Company	34,116,280.28
4003086	Kuwait Foreign Petroleum Exploration Company	14,899,000.00
4004159	Kuwait Santa Fe for Engineering and Petroleum Projects Company	90,609.00
4003178	Kuwait Drilling Company	108,486,245.67

† This claim, known as the "Well Blowout Control Claim" has previously been reviewed by this Panel (S/AC.26/1996/5 Annex).

* The physical assets claims of KOC and KPC, which are indicated above by asterisks, are the subject of this report.

B. Nature of claim

1. Facts and contentions

80. On 2 August 1990, KOC was the sole entity in Kuwait with the right and responsibility to explore for and produce petroleum and petroleum products, as well as to maintain and develop Kuwait's oil fields.

81. KOC claims that during Iraq's occupation of Kuwait, Iraqi forces took control of KOC's facilities, oil fields and offices. Kuwait asserts that it experienced extensive losses during the occupation as a result of the actions of Iraqi forces. The most serious of these claims is that Iraqi forces attached explosives to and detonated many of KOC's oil wells. KOC alleges that its assets were seriously damaged by the explosions, which destroyed oil wells and related equipment, thereby releasing crude oil onto the surface, causing fires and oil spills. KOC asserts further that missiles and gunfire also damaged its assets, while exposure to fires and oil spills further exacerbated the damage. KOC also claims that extensive looting and vandalism occurred during Iraq's unlawful invasion and occupation of Kuwait. KOC's production was allegedly reduced virtually to nothing during the occupation. Immediately after its liberation, Kuwait alleges that it was forced to import oil for the first time to meet its domestic energy needs.

82. The Panel reviewed and recommended compensation for the claim relating to the cost of extinguishing the oil fires and controlling the well blowouts in the report on the Well Blowout Control Claim ("WBC claim").[12] To the extent that factual and legal findings made in the earlier report have a bearing on claims addressed in this report, the Panel expressly refers to and adopts such findings in the context of the present claims.

83. KOC requests compensation in the amount of US$2,512,896,177 for the destruction of the physical assets employed in the exploration, production, gathering and transportation of oil and gas and in the operation and maintenance of its oil industry infrastructure. In this amount, KOC also requests compensation for the increased costs of completing projects that were delayed or interrupted by Iraq's unlawful invasion and occupation of Kuwait.

2. Claim presented

84. The elements comprising KOC's claim (the "Claim") are itemized in the following table. Details of the claim elements are presented in the sections that follow:

Table 3. Claim of Kuwait Oil Company:
UNCC Claim No: 4004160 ("Physical Assets Claim")

Claim element	Claim amount (US$)
1. Oil fields:	
(a) South East oil fields	829,245,481
(b) West oil fields	190,643,380
(c) North oil fields	359,789,088
(d) Wafra oil fields	52,854,617
2. Ahmadi Township	23,574,096
3. North and South tank farms	148,029,763
4. Marine facilities	97,295,889
5. Ras Al Zoor - Gas facility	77,634,000
6. Projects under construction/çonsideration	66,652,479
7. Well blowout control - Al Awda & Other physical assets	407,548,924
8. Post well capping - Al Tameer	202,161,869
9. Phase III	54,904,490
10. Reconstruction of the Magwa Road/	932,070
Replacement of crude line no.5	1,630,031
Total	2,512,896,177

(a) Evidence presented in support

85. KOC's primary evidence of the destruction of its physical assets is contained in its internal damage assessment reports. Damage assessment reports were compiled by KOC's personnel in August 1991 to identify the status of each asset, its presence or disappearance and condition by referring to a computer printout of KOC's assets. This field work was carried out for several months resulting in the production of comprehensive damage assessment reports comprising written and photographic record of the damages to KOC's assets. In support of its assertions that Iraqi forces were responsible for this destruction, KOC submitted numerous affidavits and transcripts of oral witness statements.

86. Further support is offered by KOC's consultants' reports which contain a description of KOC's facilities, assessments and quantification of losses incurred by KOC. KOC based its claim amounts on both actual costs incurred to the date of the claim and estimated costs for repair and

reinstatement of physical assets that had not been completed at the time of the claim. KOC's consultants' quantification of losses is therefore based on two cost elements: costs incurred and paid by KOC as of 31 March 1994 to restore KOC's facilities and future costs that KOC estimates it will incur after 31 March 1994 to complete the restoration of its facilities. KOC's consultant's reports are mainly based on site surveys, KOC's internal records and two sets of accounts. During the reconstruction period, one of KOC's project managers, Bechtel, maintained a set of accounts called Cost and Commitment Accounts ("COCO accounts") and KOC kept a set of accounts called job cost summaries.

87. The evidence of expenses incurred by KOC to reinstate its facilities is provided in its consultant's reports which include breakdowns of expenditure in table form and copies of significant contracts and/or invoices for the reinstatement of facilities. KOC states that the incurred expenses or costs are based on the COCO accounts and KOC's job cost summaries. KOC's consultant's reports also contain appendices such as plans, site inventories, photographs and an index to KOC's damage assessment reports. Other evidence submitted includes contemporaneous documents such as representative samples of substantial contracts and invoices, plans of facilities and schematic diagrams in support of its claim. KOC also provided a video record of the effects of the oil well fires.

88. Iraq alleges that a large portion of KOC's original claim amount (approximately US$589,000,000 out of US$1,916,000,000) is based on estimates of the cost of outstanding works and asserts that the claim must be revised to reflect actual costs.

89. The Panel finds that it is reasonable for KOC to have presented estimated costs for those assets that were not repaired or reinstated as of the date of the claim because of the time limits imposed on the claimants for filing claims. It is clear that KOC could not rely on actual costs to calculate the amount of its claimed loss, as its efforts to remedy such loss could not reasonably have been completed before the deadline for filing its claim with the Commission.

90. The Panel is mindful of the need for accuracy in assessing the amount of compensable losses. To require the claimant to replace completely the original claim with one based solely on actual costs would cause unnecessary expense to the claimant and unacceptable delay to the Panel. Therefore, to address this issue, the Panel directed its consultants to compare the actual costs for repair and restoration work completed after the claim was filed with the estimated costs contained in the claim. The Panel's consultants reviewed voluminous information regarding the costs incurred and compared this information with the estimated costs contained in the claim. Based on this review, the Panel's consultants concluded that

the estimation procedure used was sufficiently accurate and that the variance between actual and estimated costs was negligible. The Panel is therefore satisfied that the calculation of KOC's claim has been prepared using acceptable methods.

(b) Iraq's response

91. Iraq generally disputes the compensability and certain valuation aspects of KOC's claims for reasons that can be summarized as set forth below.

(a) KOC's claim should be re-submitted to the Commission under category "F" as a Government claim to avoid duplication of claims.

(b) There is no independent auditors' or accountants' report on the financial aspects of the claim.

(c) There is no explanation of the difference between the loss figure in KOC's financial statement for the year ended 1997 and the claim figure submitted.

(d) Many assumptions and methods used in KOC's calculations are aimed to inflate the claim and therefore constitute a departure from the direct loss requirement. Further, certain bases, assumptions and methods are identified as incorrect. Specifically, in some instances, depreciation is not applied, residual life of assets employed is too high and betterment is not taken into account.

(e) KOC's claim is exaggerated as shown by the net book value of its fixed assets on its balance sheet as at 30 June 1990.

92. In addition to the general responses in the above, Iraq contests certain individual claims on specific grounds, which will be mentioned throughout the analysis of the claim.

93. The Panel has reviewed Iraq's general and specific replies to KOC's Physical Assets claim, some of which are more fully addressed in the context of the discussion below. Nevertheless, the Panel takes this opportunity to summarize its findings on the general objections to this claim expressed by Iraq.

3. The Panel's general findings

94. In its report on the WBC claim, the Panel found that claims by Kuwaiti oil sector companies could be filed as category "E" (corporate) claims rather than category "F" (government) claims because "public sector enterprises" such as KOC were intended to file category "E" claims pursuant

to paragraph 16 of Governing Council decision 7 (see paragraph 51 of the Panel's report on the WBC claim).

95. Article 35(1) of the Provisional Rules For Claims Procedure provides a general guidance on the submission of evidence by a claimant:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

96. Article 35(3) states the standard of evidence required for corporate, government and international organization claims:

> "With respect to claims received under the Criteria for Processing Claims of Individuals not Otherwise Covered, Claims of Corporations and Other Entities, and Claims of Governments and International Organizations (S/AC.26/1991/7/Rev.1), such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss."

97. The Panel finds that Article 35(3) sets the evidentiary standard that a claimant must meet. Accordingly, the Panel will address specific issues of evidence for each claim element in the claim analysis section. As noted in paragraph 31, *supra*, a claimant must support its claim "by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss". Article 35(3) does not impose any formal requirements on the type of evidence presented by claimants, but rather directs the Panel to consider whether such evidence is probative.

98. Therefore KOC is not required to produce independent reports in order to recover the amounts claimed, nor is it bound by loss figures used in corporate reports for previous years, provided that other evidence produced establishes the circumstances and amount of the claimed loss.

99. Notwithstanding the foregoing, to the extent that evidence presented by KOC may be, for example, contradicted by contemporaneous corporate records, or does not reflect accepted business practices in the oil sector, the Panel examined the evidence presented with heightened scrutiny in order to determine whether the claimant satisfied its evidentiary obligations under Article 35(3).

C. Analysis of the claim

100. KOC first filed its claim in 1994. At that time, the work required to repair and reinstate its facilities was only partially completed. In order to meet the original claims deadline, therefore, KOC was required to estimate certain costs. Thus, as noted above, the KOC claim elements consist of both the actual costs of repair and reinstatement incurred prior to the preparation of the claim and the estimated future costs to complete this work.

101. From these costs, KOC proposes deductions, which it calls "adjustments", to account for depreciation, betterment and other benefits it received from reinstatement of its facilities.

102. Each section of this report on KOC's claim contains a table detailing the claimant's alleged actual and estimated future costs and its proposed adjustments, if any. At the end of its analysis of each section, the Panel includes a table showing additions or deductions made by the Panel to the amounts proposed by the claimant.

1. Oil fields

103. The assets employed in KOC's oil fields include oil wells, flowlines, gathering centres, booster stations and pipelines.

104. KOC claims that prior to the invasion, there were 1,064 oil wells in Kuwait, of which 914 were operational. KOC also claims that as a result of the actions of the Iraqi forces, the great majority of these wells and related equipment in the South East, North and West oil fields were extensively damaged, that the oil fires polluted the atmosphere in Kuwait, and that spilled oil produced massive oil lakes and contaminated the surrounding soil. The Panel has previously reviewed evidence supplied by the claimant on this issue and found that these assertions are correct (see report on the Well Blowout Control Claim S/AC.26/1996/5/Annex paragraph 36, p.12; paragraph 85, p.26).

105. KOC alleges that, in addition to the damage caused by the destruction of the oil wells, the failure of the cathodic protection system accelerated the rate of corrosion of many pipelines. The gathering centres and booster stations were also damaged or destroyed from exposure to heat and gunfire.

106. KOC claims that it was forced to make numerous structural and organizational changes to its oil field operations as a result of the destruction. For example, many wells that resumed production after liberation had to be connected to different gathering centres due to the limited availability or functioning of the gathering centres. Where a gathering centre was destroyed to the extent that it could not be

reinstated, any undamaged or repairable components of the gathering centres were generally salvaged and transferred for use at other facilities. KOC produced tables illustrating the structural and organizational changes it had to make in order to resume production as soon as possible using available assets.

107. Iraq argues that costs for additional facilities installed at the gathering centres should be excluded.

108. The Panel notes that KOC acknowledged that additional facilities were installed at the gathering centres due to the structural and organizational changes it had to make to resume production following the liberation of Kuwait from Iraq's unlawful invasion and occupation of Kuwait. As will be seen in the analysis of each of the individual claim element, KOC has made deductions for betterment that it gained in respect of these additional facilities. The Panel finds that KOC's approach to the costs for additional facilities is justified.

109. Iraq alleges that the reconstruction work executed on the wells is not sufficiently detailed by KOC and that the project management costs are unreasonably high.

110. Based on the evidence and inspection work carried out in the oil fields, the Panel is satisfied with the level of detail KOC has provided on the reconstruction work executed on the wells. The Panel also considers that although KOC's project management costs are high, they are justified given the difficult circumstances in which the work had to be carried out.

111. Iraq has also alleged that costs relating to redirecting flowlines should be excluded as they are not repair work but are instead KOC-determined modifications and enhancements. Based on the evidence, the Panel finds that the redirecting of the flowlines was necessary either for KOC to reorganize its gathering centres or to carry out temporary work at its oil fields. The Panel finds, therefore, that these costs are justifiably included by KOC as they are direct costs.

112. Iraq also contends that the valuation methods employed by KOC are inaccurate. The Panel finds that, in general, the valuation methods employed by KOC are acceptable. To the extent that the Panel disagrees with KOC's methods of valuation, the Panel will recommend the adjustments or alternative approaches that it deems appropriate throughout the claim.

113. Except as specifically noted elsewhere in this section, the Panel finds that the oil field assets have been damaged as described by KOC in its claim and supporting evidence. The Panel finds that this damage was the direct result of Iraq's unlawful invasion and occupation of Kuwait. As a result, the Panel finds that, to the extent they are supported by

appropriate evidence, KOC's losses to its oil field assets in Kuwait and in the PNZ are compensable under Security Council resolution 687 (1991) as losses directly resulting from Iraq's unlawful invasion and occupation of Kuwait. Where the Panel finds that a specific claimed loss is not compensable or is not supported by the evidence, this finding is recorded in the section analyzing that loss.

114. As discussed above, KOC operates mainly in the South East oil fields, West oil fields, North oil fields and Wafra oil fields. The oil fields claim element is divided among these operations and the claimed losses relating to each area are discussed in separate sections below.

115. In respect of each claimed loss, the Panel has independently evaluated the extent and the quantification of the losses claimed.

(a) South East oil fields

116. KOC requests compensation in the amount of US$829,245,481 for losses to physical assets in the South East oil fields, which comprise three oil fields: Magwa, Ahmadi and Burgan. KOC asserts that 549 out of 639 oil wells located in the South East oil fields were damaged and that 15 gathering centres sustained major damage, of which four were totally destroyed. Both booster stations suffered from lack of maintenance and other minor damage. Flowlines throughout the South East oil fields were damaged as a result of oil fires or military activity. Other major assets, such as the pumping centre, power station and field administration and service centre, suffered structural damage and required repairs due to the formation of crude and sand crusts on their exteriors. KOC also alleges damage from vandalism of its facilities.

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117. KOC's calculations are shown in the following table:

Table 4. South East oil fields claim amounts

Claim item/adjustment	Claimant adjustments (US$)	Claim amount (US$)
(i) Incurred costs		799,015,631
(ii) Adjustments to incurred costs		
a. Betterment	(2,328,435)	(2,328,435)
b. Depreciation	(24,134,029)	(24,134,029)
c. Desalter project (Phase III)	(17,217,686)	(17,217,686)
(iii) Future costs		161,756,000
(iv) Adjustments to future costs		
a. Depreciation	(87,846,000)	(87,846,000)
Total	(131,526,150)	829,245,481

(i) Incurred costs

118. KOC first requests compensation in the amount of US$799,015,631 for costs it incurred in repairing and reinstating the physical facilities at its South East oil fields. Based on its review of the records and other evidence submitted (see paragraphs 85-90, supra), the Panel finds that KOC's incurred costs are correctly stated as US$799,015,631.

(ii) Adjustments to incurred costs

a. Betterment

119. KOC proposes a betterment deduction of US$2,328,435 to its incurred costs to account for improvements it realized when it replaced two control buildings and purchased some new desalter equipment in repairing and restoring the facilities in the South East oil fields. The Panel considers that this proposal accurately accounts for the betterment to KOC's facilities in the South East oil fields. The Panel finds therefore, that a deduction in the amount of US$2,328,435 to incurred costs to adjust for betterment is justified.

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b. Depreciation

120. KOC also proposes a deduction in the amount of US$24,149,460 to its incurred costs to account for accumulated depreciation where older facilities were repaired or restored with newer equipment. The Panel's consultants indicated to the Panel that, as a result of a calculation error, KOC erroneously quantified this amount as US$24,134,029.

121. KOC uses a residual value of 10 per cent to calculate depreciation in the amount of US$4,359,948 for the tanks and related facilities at the South East oil fields. The Panel finds, however, based on information provided by its consultants, that five per cent is the industry norm for the tanks and related equipment at issue. After adjusting for the lower residual values for the tanks and related equipment, the Panel finds that the depreciation deduction for those items should be increased to US$4,993,987.

122. KOC uses a residual value of 15 per cent to calculate depreciation in the amount of US$843,028 for permanent buildings at the end of their economic life, i.e., buildings of substantial construction with services connected to ground installations. Because of their likely end of life condition and remote location, however, the Panel's consultants expressed the opinion that such buildings could not command any value on the market at the end of their economic life. The Panel agrees with this point of view and considers that this residual value is too high for such property. The Panel finds that a nominal one per cent residual value should be attributed to property of this nature. After adjusting for the lower residual values for the buildings, the Panel finds that the depreciation deduction for the buildings should be increased to US$1,186,987.

123. KOC uses a residual value of 90 per cent to calculate depreciation in the amount of US$18,946,484 for flowlines laid on the desert surface. During the verification process, however, KOC was unable to substantiate its basis for this estimate, relying instead on its estimation that the flowlines were in extremely good condition prior to the invasion. Based on the evidence provided, including the age of the flowlines and the harsh environment in which the flowlines were located, the Panel concludes that the flowlines had no more than 75 per cent of their useful life remaining. The Panel considers that this is an appropriate residual value and finds that the depreciation deduction for the flowlines should be increased to account for this shorter life. After adjusting for the lower residual values for the flowlines, the Panel finds that the depreciation deduction for the flowlines should be increased to US$47,366,210.

124. Taking into account the further adjustments to the proposed depreciation deduction discussed above, the Panel finds that a total

depreciation deduction of US$53,547,184 should be made to KOC's claim for incurred costs at the South East oil fields.

c. Desalter Phase III project

125. KOC proposes a deduction in the amount of US$17,217,686 to its incurred costs to account for remaining costs to complete its Desalter Phase III project that it had included in its incurred costs. At the time of the invasion, KOC had commenced work on a Desalter Phase III project. Following liberation, the damage to the Desalter Phase III project was repaired and the project was completed. The entire cost of this work - both the repair and the completion - is included within KOC's incurred costs claim amount.

126. KOC correctly identified the need to deduct US$11,569,033 from the claim for incurred costs for the part of the Desalter Phase III project that was incomplete at the time of the invasion but which was completed during restoration work. KOC also proposed a further deduction of US$5,648,653 to reflect an anticipated price increase of 10 per cent to complete the Desalter Phase III project. The Panel finds that these estimated deductions are supported by the evidence. The Panel finds, therefore, a deduction of US$17,217,686 from incurred costs to account for the costs of completing the Desalter Phase III project should be made.

(iii) Future costs

127. KOC also requests compensation in the amount of US$161,756,000 for the estimated future costs it expects to incur to complete the reconstruction of the South East oil field facilities. This amount includes estimated costs of repair and reinstatement to KOC's facilities as well as an allowance to cover contingencies, design review, commissioning costs, KOC staff support and debris removal for a number of facilities within the South East oil fields. The allowance is calculated as 30 per cent of the estimated asset-related costs.

128. The Panel finds that the estimated future costs for the repair or reinstatement of the remaining facilities are supported by the evidence.

129. The Panel finds, however, that the allowance of 30 per cent included in the future costs is overstated. First, the allowance included for KOC staff costs is not appropriate. An international oil company such as KOC, ordinarily funds internal design and project management personnel as part of its normal operations. The Panel finds that KOC may not claim compensation for such costs, if they would have been incurred in the course of KOC's normal operations. Thus, a reduction in the allowance is appropriate. A deduction in this respect is consistent with the earlier findings of the Panel in the WBC claim. A further reduction in the

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allowance was made for general contingencies, design review and debris removal, for which the Panel made an adjustment to take into account a nominal credit for scrap recovery. Based on the opinion of the Panel's consultants and the above analysis, the Panel agrees and finds that an allowance of 20 per cent is more appropriate for the contingencies identified by KOC and reduces the claimed allowance accordingly.

130. After adjusting for the reduced allowances, the Panel finds that KOC's estimated future costs for the South East oil fields should be US$149,313,231.

(iv) Adjustments to future costs

a. Depreciation

131. KOC proposes a deduction in the amount of US$87,846,000 from its claim for future estimated costs to account for accumulated depreciation where older facilities will be repaired or restored with newer equipment. Based on its findings regarding the appropriate residual values for tanks, related equipment and buildings, discussed in paragraphs 121-122, *supra*, the Panel finds that the depreciation deductions from future estimated costs are understated. The Panel considers that a revised depreciation deduction should be calculated using the adjusted residual values for estimated future costs, and therefore finds that KOC's deduction for estimated future costs should be increased to US$93,674,724.

132. In summary, the Panel recommends compensation for KOC's claim for the South East oil fields in the amount of US$781,560,833, as itemized in the following table:

Table 5. South East oil fields recommended compensation

Claim item/adjustment	Claim amount and adjustments (US$)	Panel's adjustments to claimants amounts (US$)	Recommended compensation (US$)
(i) Incurred costs	799,015,631		799,015,631
(ii) Adjustments to incurred costs			
a. Betterment	(2,328,435)		(2,328,435)
b. Depreciation	(24,134,029)	(29,413,155)	(53,547,184)
c. Desalter Phase III project	(17,217,686)		(17,217,686)
(iii) Future costs	161,756,000	(12,442,769)	149,313,231
(iv) Adjustments to future costs			
a. Depreciation	(87,846,000)	(5,828,724)	(93,674,724)
Total	829,245,481	(47,684,648)	781,560,833

(b) West oil fields

133. KOC requests compensation in the amount of US$190,643,380 for losses to physical assets in the West oil fields. KOC asserts that 71 out of 80 wells were damaged, three gathering centres were a total loss, and that one booster station was damaged by shrapnel, exposure to well fires and oil lakes. KOC also alleges that the Abduliyah Water Centre and two pilot water injection plants were virtually destroyed and that flowlines were damaged as a result of oil lake fires or military activity. KOC further alleges vandalism on its assets.

134. KOC's calculations are shown in the following table:

Table 6. West oil fields claim amounts

Claim item/adjustment	Claimant adjustments (US$)	Claim amount (US$)
(i) Incurred costs		110,043,615
(ii) Adjustments to incurred costs		
a. Depreciation	(12,620,635)	(12,620,635)
(iii) Future costs		172,209,000
(iv) Adjustments to future costs		
a. Depreciation	(78,988,600)	(78,988,600)
Total	(91,609,235)	190,643,380

(i) Incurred costs

135. KOC first requests compensation in the amount of US$110,043,615 for costs it incurred in repairing and reinstating the physical facilities at its West oil fields. Based on its review of the records and other evidence submitted (see paragraphs 85-90, *supra*), the Panel concludes that KOC's incurred costs are correctly stated and finds, therefore, that costs are US$110,043,615.

(ii) Adjustments to incurred costs

a. Depreciation

136. KOC proposes a depreciation deduction of US$12,620,571 to its incurred costs to account for accumulated depreciation where older facilities were repaired or restored with newer equipment. The Panel's consultants indicated to the Panel that, as a result of a calculation error, KOC erroneously quantified this amount as US$12,620,635.

137. KOC uses a residual value of 10 per cent to calculate depreciation in the amount of US$9,795,921 for the tanks and related facilities in the West oil fields. The Panel finds, however, based on information provided by its consultants, that five per cent is the industry norm for the tanks and related equipment. After adjusting for the lower residual value of the tanks and the related equipment, the Panel finds that the depreciation deduction for these items should be increased to US$9,952,863.

138. KOC uses a residual value of 90 per cent to calculate depreciation in the amount of US$2,824,650 for the flowlines laid on the desert surface. As discussed in paragraph 123, supra, the Panel finds that this residual value is overstated and that a 75 per cent residual value should be attributed to property of this nature. After adjusting for the lower residual value for the flowlines, the Panel finds that the depreciation deduction for the flowlines should be increased to US$7,061,625.

139. Taking into account the further adjustments to the proposed depreciation deduction discussed above, the Panel finds that a total depreciation deduction of US$17,014,488 should be made to the claim for incurred costs at the West oil fields.

(iii) Future costs

140. KOC also requests compensation in the amount of US$172,209,000 for the estimated future costs it expected to incur to complete the reconstruction of the West oil field facilities. This claim amount includes estimated costs of repair and reinstatement to KOC's facilities as well as an allowance to cover contingencies, design review, commissioning costs, KOC staff support and debris removal for a number of facilities within the West oil fields. The allowances are calculated as 30 per cent of the estimated asset-related future costs.

141. Based on the evidence, the Panel finds that the estimated future costs for the repair or replacement of the remaining facilities are justified.

142. The Panel finds, however, as discussed in paragraph 129, supra, that the allowance of 30 per cent included in the future costs is overstated. The Panel finds that 20 per cent is a more appropriate allowance for the contingencies identified by KOC and reduces the claimed allowance accordingly.

143. After adjusting for the reduced allowances, the Panel finds that KOC's estimated future costs for the West oil fields should be US$158,962,154.

(iv) Adjustments to future costs

a. Depreciation

144. KOC proposes a deduction in the amount of US$78,988,600 from future estimated costs to account for accumulated depreciation where older facilities will be repaired or restored with newer equipment. Based on its findings regarding the appropriate residual values for tanks, related

equipment and flowlines, discussed in paragraphs 121-123, supra, the Panel finds that the depreciation deductions from future estimated costs are understated. The Panel calculates a revised depreciation deduction for estimated future costs of US$86,763,698 and finds that KOC's deduction for estimated future costs should be increased to this amount.

145. In summary, the Panel recommends compensation for KOC's claim for the West oil fields in the amount of US$165,227,583 as itemized in the following table.

Table 7. West oil fields recommended compensation

Claim item/adjustment		Claim amount and deductions (US$)	Panel's adjustments to claimant amounts (US$)	Recommended compensation (US$)
(i)	Incurred costs	110,043,615		110,043,615
(ii)	Adjustments to incurred costs			
	a. Depreciation	(12,620,635)	(4,393,853)	(17,014,488)
(iii)	Future costs	172,209,000	(13,246,846)	158,962,154
(iv)	Adjustments to future costs			
	a. Depreciation	(78,988,600)	(7,775,098)	(86,763,698)
	Total	190,643,380	(25,415,797)	165,227,583

(c) North oil fields

146. KOC requests compensation in the amount of US$359,789,088 for losses to physical assets in the North oil fields. KOC asserts that 178 out of 195 wells were damaged, three gathering centres were totally destroyed and that the remaining two gathering centres sustained major damages. One booster station suffered damage from oil fires. KOC also alleges that the Iraqi forces damaged the gas system by filling it with oil. Flowlines were damaged as a result of oil lake fires or military activity. KOC further alleges vandalism on its assets.

147. KOC's calculations are shown in the following table:

Table 8. North oil fields claim amounts

Claim item/adjustment		Claimant adjustments (US$)	Claim amount (US$)
(i)	Incurred costs		164,645,090
(ii)	Adjustments to incurred costs		
	a. Depreciation	(7,395,752)	(7,395,752)
(iii)	Future costs		296,927,000
(iv)	Adjustments to future costs		
	a. Depreciation	(94,387,250)	(94,387,250)
Total		(101,783,002)	359,789,088

(i) Incurred costs

148. KOC first requests compensation in the amount of US$164,645,090 for costs it incurred in repairing and reinstating the physical facilities at its North oil fields. Based on their review of the records and other evidence submitted (see paragraphs 85-90, supra), the Panel concludes that KOC's incurred costs are correctly stated and finds, therefore, that costs are US$164,645,090.

(ii) Adjustments to incurred costs

a. Depreciation

149. KOC proposes a deduction in the amount of US$7,395,752 to its incurred costs to account for accumulated depreciation where older facilities were repaired or restored with newer equipment.

150. KOC uses a residual value of 10 per cent to calculate depreciation in the amount of US$3,389,244 for tanks and related equipment and plant equipment in the North oil fields. The Panel finds, however, based on information provided by its consultants, that five per cent is the industry norm for the tanks and related equipment at issue. After adjusting for the lower residual value for the tanks and related equipment, the Panel finds that the depreciation deduction for these items should be increased to US$3,973,903.

151. KOC uses a residual value of 15 per cent to calculate depreciation in the amount of US$71,750 for permanent buildings at the end of their economic life i.e. buildings of substantial construction with services connected to ground installations. As discussed at paragraph 122, supra, the Panel finds that this residual value is overstated and that a nominal one per cent residual value should be attributed to property of this nature. After adjusting for the lower residual value for the buildings, the Panel finds that the depreciation deduction for these items should be increased to US$88,970.

152. KOC uses a residual value of 90 per cent to calculate depreciation in the amount of US$3,962,009 for the North oil fields flowlines laid on the desert surface. As discussed in paragraph 123, supra, the Panel finds that this residual value is overstated and that a 75 per cent residual value should be attributed to property of this nature. After adjusting for the lower residual value for the flowlines, the Panel finds that the depreciation deduction for the flowlines should be increased to US$9,905,022.

153. Taking into account the further adjustments discussed above, the Panel finds that a depreciation deduction of US$13,967,895 should be made to the claim for incurred costs at the North oil fields.

(iii) Future costs

154. KOC also requests compensation in the amount of US$296,927,000 for the estimated future costs it expected to incur to complete the reconstruction of the North oil field facilities. This amount includes estimated costs of repair and reinstatement of KOC's facilities as well as an allowance to cover contingencies, design review, commissioning costs, KOC staff support and debris removal for a number of facilities within the North oil fields. The allowances are calculated as 30 per cent of the estimated asset-related future costs.

155. The Panel finds that the estimated future costs for the repair or reinstatement of the remaining facilities are supported by the evidence.

156. The Panel finds, however, as discussed in paragraph 129, supra, that the allowance of 30 per cent included in the future costs is overstated. The Panel finds that 20 per cent is a more appropriate allowance for the contingencies identified by KOC and reduces the claimed allowance accordingly.

157. After adjusting for the reduced allowances, the Panel finds that KOC's estimated future costs for the North oil fields are US$274,086,642.

(iv) Adjustments to future costs

a. Depreciation

158. KOC proposes depreciation deductions from its claim for future estimated costs of US$94,387,250. Based on its findings regarding the appropriate residual values for tanks and related equipment, buildings and flowlines, discussed in paragraphs 121-123, *supra*, the Panel finds that KOC's depreciation deductions from future estimated costs for these items are understated. The Panel calculates a revised depreciation deduction for estimated future costs of US$106,600,895 and finds that KOC's deduction for estimated future costs should be increased to this amount.

159. In summary, the Panel recommends compensation for KOC's claim for the North oil fields in the amount of US$318,162,942, as itemized in the following table.

Table 9. North oil fields recommended compensation

Claim item/adjustment		Claim amount and deductions (US$)	Panel's adjustments to claimant amounts (US$)	Recommended compensation (US$)
(i)	Incurred costs	164,645,090		164,645,090
(ii)	Adjustments to incurred costs			
	a. Depreciation	(7,395,752)	(6,572,143)	(13,967,895)
(iii)	Future costs	296,927,000	(22,840,358)	274,086,642
(iv)	Adjustments to future costs			
	a. Depreciation	(94,387,250)	(12,213,645)	(106,600,895)
	Total	359,789,088	(41,626,146)	318,162,942

(d) Wafra oil fields

160. KOC requests compensation in the amount of US$52,854,617 for losses to physical assets in the Wafra oil fields which comprise the main Wafra field, South Fuwaris field and South Umm Gudair. As discussed in paragraphs 75-76, *supra*, and 356, *infra*, KOC conducts joint operations with SAT (the "JO") in the Wafra oil fields which are situated onshore in the PNZ. Certain assets are jointly owned by KOC and SAT, are purchased on a joint account and are known as JO assets. KOC states that each asset is

assigned a reference number on acquisition, and a register of these assets is maintained.

161. KOC alleges that substantial damage to its assets was incurred in the Wafra oil fields except in the South Fuwaris area. Even though the oil wells and facilities were exposed to sabotage and military hostilities, KOC acknowledges that the Wafra fields were spared from extensive damage caused by oil well fires and oil spillage. KOC alleges that about 40 wells were on fire or spilling oil onto the surface. KOC also alleges that 293 out of 358 wells were damaged by explosives and that, in addition, 14 out of 20 sub-gathering centres suffered major damage mainly due to explosions and consequent fires, the main gathering centre sustained major damage and most storage tanks were destroyed. KOC further alleges that it lost its Eocene well core sample. KOC states that flowlines were damaged as a result of oil lake fires or military activity and that the Wafra camp buildings sustained substantial damage as well.

162. Following the liberation of Kuwait, KOC states that reinstatement works in the Wafra oil fields consisted of extinguishing well fires, clearing unexploded ordnance and repairing wells to resume production. KOC also states that repairs to the wells included fishing to recover downhole debris and parts from damaged pumping units. KOC further states that pumping units at the wells were repaired or replaced, sometimes with units from other wells. For the reinstatement of Wafra oil fields, it was agreed between SAT and KOC that reinstatement costs related to the invasion and occupation would be shared equally. The agreement applied to all assets in the PNZ except for oil and gas transmission lines, for which each party would be separately responsible.

163. Based on the evidence, the Panel finds that KOC's physical assets in the Wafra oil fields have been damaged as alleged by KOC and that this damage is the direct result of Iraq's unlawful invasion and occupation of Kuwait.

164. Due to the JO with SAT, KOC calculates this claim element in a slightly different manner from that used in respect of other oil field claims. As noted previously, KOC's claim amount consists of costs incurred prior to the date of preparation of the claim to repair and reinstate its facilities plus the estimated future costs to complete this work. KOC includes in the incurred costs portion of the Wafra claim amount both its own incurred costs and the full amount of the JO's incurred costs. From the total of these incurred costs, KOC proposes to deduct 50 per cent of the JO incurred costs to account for the fact that it had only a 50 per cent share in the JO and, thus, incurred only 50 per cent of the costs. KOC applies a similar approach to estimated future costs. KOC's calculations are shown in the following table:

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Table 10. Wafra oil fields claim amounts

	Claim item/adjustment	Claimant adjustments (US$)	Claim amount (US$)
(i)	Incurred costs - KOC		12,431,904
(ii)	Incurred costs - JO		47,852,083
(iii)	Adjustments to incurred costs - JO		
	a. JO Ownership deduction	(23,926,041)	(23,926,041)
(iv)	Future costs		52,968,900
(v)	Adjustments to future costs		
	a. Depreciation	(19,975,558)	(19,975,558)
	b. JO Ownership deduction	(16,496,671)	(16,496,671)
	Total	(60,398,270)	52,854,617

(i) Incurred costs - KOC

165. KOC first requests compensation in the amount of US$12,431,904 for costs it incurred in repairing and reinstating the physical facilities at its Wafra oil fields. KOC's claim includes the costs to replace one 12-inch pipeline and one 16-inch pipeline, both running from the Wafra oil fields to refineries on the Kuwaiti coast.

166. Iraq alleges that certain components in the costs incurred on the 12-inch pipeline and the 16-inch pipeline are overstated.

167. Based on the Panel's review of the records and other evidence submitted (see paragraphs 85-90, supra), it concludes that KOC's incurred costs on certain assets are overstated except for the 12-inch pipeline. KOC was also unable to supply adequate information in support of the whole amount claimed for KOC's incurred costs.

168. KOC requests compensation in the amount of US$1,529,333 for the replacement cost of a 12-inch pipeline. Based on the evidence, the Panel is of the opinion that the costs of the 12-inch pipeline were correctly stated as US$1,529,333 and that the damage to this asset was a result of Iraq's unlawful invasion and occupation of Kuwait. The Panel finds, therefore, that the costs of the 12-inch pipeline are US$1,529,333.

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169. KOC requests compensation in the amount of US$10,902,571 for the replacement cost of a 16-inch pipeline. Although the evidence supplied by KOC does confirm the original cost of the 16-inch pipeline, it does not adequately support KOC's claim that the 16-inch pipeline was a total loss. In fact, the damage assessment reports covering the 16-inch pipeline estimated that this pipeline had been damaged only in a minimal amount, quantified at 10 per cent. The Panel's consultants calculated that the reasonable replacement cost for the 16-inch pipeline, including installation, would have been approximately US$15,000,000. The Panel finds, therefore, that the amount of this claim item should be reduced to 10 per cent of the replacement cost or US$1,500,000.

170. Based on the foregoing analysis, the Panel finds that the KOC incurred costs should be reduced to US$3,029,333.

(ii) Incurred costs - JO

171. KOC requests compensation in the amount of US$47,852,083 for costs it incurred in repairing and reinstating the JO's physical facilities at its Wafra oil fields. Based on their review of the records and other evidence submitted (see paragraphs 85-90, supra), the Panel concludes that the JO incurred costs were overstated by a small amount. Specifically, KOC understated accumulated depreciation on certain assets included in this item of the claim by US$1,146,550. The Panel therefore finds that the JO incurred costs should be reduced to US$46,705,533.

(iii) Adjustments to incurred costs - JO

a. JO Ownership deduction

172. KOC also proposes a deduction in the amount of US$23,926,041 to its incurred JO costs. Because KOC's proposed JO claim amount includes 100 per cent of the total JO costs, it was necessary for KOC to deduct the 50 per cent that related to SAT's potential claim. The Panel agrees with this approach. The Panel finds, however, that the deduction should be limited to US$23,352,766, which represents 50 per cent of the incurred JO costs as found by the Panel in paragraph 171, supra, which represents a further reduction of US$573,275 to the claimed amount.

173. The Panel notes that the compensation to be awarded to KOC for its share of the JO incurred costs at Wafra is less than the amount recommended for SAT. (See paragraph 427, infra.) The difference in recommended awards is the result of the different approaches used by these claimants. As noted, KOC relied extensively on estimated costs. SAT, however, filed an amended claim in 1997 that included actual incurred cost figures for the JO assets at Wafra. KOC declined the opportunity to rely on SAT's

calculations. Thus, the Panel's recommended award is based on KOC's estimated costs, which are lower than the actual costs incurred.

(iv) Future costs

174. KOC also requests compensation in the amount of US$52,968,900 for the estimated future costs it expected to incur to complete the repair and reinstatement of the Wafra oil field facilities. These estimated future costs include replacement and/or repair costs for abandoned and unfished wells, pumping units, flowlines/transmission lines, sub-gathering centres, the main gathering centre and KOC's Wafra camp.

175. Iraq alleges that it is unreasonable for KOC to assume a two per cent failure in well fishing operations for cased Eocene wells and therefore the cost of drilling new wells should be excluded. Iraq further alleges that it is unnecessary to compensate for drilling of a new well to obtain core samples for a field already in production phase. Finally, Iraq disputes that KOC's allocation for the overhaul of its pumping units is due to damage caused by military operations.

176. Based on the evidence, the Panel finds that KOC's assumption in the well fishing operations for the cased Eocene wells is reasonable in the circumstances, where the majority of the wells were damaged. The Panel also finds that KOC had lost its core samples as it had alleged and needed to drill a new well to obtain core samples as some of its wells had been abandoned, could not be successfully fished and had not resumed production. Accordingly, the Panel finds that including the claim for the cost of drilling new wells is justified. Further, based on the evidence, the Panel finds that as a result of Iraq's unlawful invasion and occupation of Kuwait, KOC's pumping units were neglected and not properly maintained. The Panel finds, therefore, that the cost of overhauling pumping units is a cost in addition to KOC's maintenance cost in the ordinary course of its business, and therefore compensable.

177. The Panel also finds, however, that KOC's proposed residual value of 10 per cent for its subgathering centres in Wafra oil fields is overstated. The Panel finds that based on the information provided by its consultants, a residual value of five per cent is the industry norm for assets such as the subgathering centres at issue. After adjusting for the lower residual value for the subgathering centres, the Panel finds that a deduction of US$1,368,150 should be made to the claim for future estimated costs. Taking into account this adjustment, the Panel finds that the estimated future costs at Wafra oil fields should be reduced to US$51,600,750.

(v) Adjustments to future costs

a. Depreciation deductions

178. KOC proposes a deduction in the amount of US$19,975,558 to its claim for future estimated costs to account for accumulated depreciation where older facilities will be repaired or restored with newer equipment.

179. KOC uses a residual value of 10 per cent to calculate depreciation for tanks and related equipment, as well as plant equipment, in the Wafra oil fields. As discussed in paragraph 121, supra, the Panel finds that this residual value is overstated and that five per cent is the industry norm for the items.

180. KOC also uses a residual value of 15 per cent to calculate depreciation for permanent buildings at the end of their economic life. As discussed in paragraph 122, supra, the Panel finds that this residual value is overstated and that a nominal one per cent residual value should be attributed to property of this nature.

181. Taking into account the adjustments to depreciation discussed above, the Panel finds that a depreciation deduction of US$24,288,149 should be made to the claim for future estimated costs at the Wafra oil fields.

b. JO ownership deductions

182. KOC proposes a JO ownership deduction in the amount of US$16,496,671 to its claim for estimated future costs. Based on the reductions to the JO estimated future costs made above, the Panel also finds that the JO ownership deduction should be reduced to US$13,656,300, or 50 per cent of the total accepted JO future estimated costs.

183. In summary, the Panel recommends compensation for KOC's claim for the Wafra oil fields in the amount of US$40,038,401, as itemized in the following table:

Table 11. Wafra oil fields recommended compensation

Claim item/adjustment	Claim amount and deductions (US$)	Panel's adjustments to claimant amounts (US$)	Panel's recommended compensation (US$)
(i) Incurred costs-KOC	12,431,904	(9,402,571)	3,029,333
(ii) Incurred costs-JO	47,852,083	(1,146,550)	46,705,533
(iii) Adjustments to JO incurred costs			
a. JO Ownership Deduction	(23,926,041)	573,275	(23,352,766)
(iv) Future costs - JO	52,968,900	(1,368,150)	51,600,750
(v) Adjustments to JO future costs			
a. Depreciation	(19,975,558)	(4,312,591)	(24,288,149)
b. JO Ownership Deduction	(16,496,671)	2,840,371	(13,656,300)
Total	52,854,617	(12,816,216)	40,038,401

2. The Ahmadi Township

184. KOC requests compensation in the amount of US$23,574,096 for losses to physical assets in the Ahmadi Township. KOC alleges that Iraqi troops occupied the Ahmadi Township and that damage was caused by inter alia, looting, arson and vandalism. KOC also alleges that damage to the structures in the township was further caused by airborne attack, bombing, resulting fires and smoke deposits from well fires.

185. Iraq alleges that the allowance for future repair for the remaining buildings is unjustified since the buildings have not suffered any damage and that a number of KOC employees were living in normal conditions in the Ahmadi Township during the hostilities. Iraq also disputes the assumption by KOC's consultants that all residential houses were damaged to a certain degree.

186. Based on the evidence, the Panel finds that KOC's physical assets in the Ahmadi Township have been damaged as alleged by KOC and that this damage is the direct result of Iraq's unlawful invasion and occupation of Kuwait. To the extent the Panel disagrees with the assumptions and

valuation method of KOC's consultants, the Panel will specifically indicate that in the analysis of this claim element.

187. KOC's calculations are shown in the following table:

Table 12. Ahmadi Township claim amounts

Claim item/adjustment	Claimant adjustments (US$)	Claim amount (US$)
(a) Incurred costs		16,804,111
(b) Future costs		46,189,900
(c) Adjustments to future costs		
(i) Depreciation	(15,479,400)	
(d) Adjustments to residual value	(23,940,515)	
Total	(39,419,915)	23,574,096

(a) Incurred costs

188. KOC first requests compensation in the amount of US$16,804,111 for costs it incurred in repairing and reinstating the physical facilities at Ahmadi Township. Based on their review of the records and other evidence submitted (see paragraphs 85-90, supra), the Panel concludes that KOC's incurred costs are correctly stated and finds that these costs are US$16,804,111.

(b) Future costs

189. KOC also requests compensation in the amount of US$46,189,900 for the estimated future costs to complete the reconstruction of the Ahmadi Township. This amount includes, among other items, estimated costs for KOC materials used by KOC's employees to repair their housing units, industrial buildings repair allowance and replacement costs for playground equipment.

190. KOC requests compensation in the amount of US$1,582,000 for costs of KOC materials that were allegedly used by KOC's employees to repair their housing units in Ahmadi. The Panel's consultants could not verify this amount based on the evidence submitted or during the verification exercise. The Panel finds, therefore, that these costs are not supported by the evidence and should be deducted from KOC's estimated future costs.

191. KOC requests compensation in the amount of US$1,500,000 for an industrial buildings repair allowance. The Panel's consultants could not verify the exact nature of items upon which this allowance would be spent. The buildings that have been repaired and estimates of outstanding work were already accounted for under the incurred costs and estimates for outstanding works. Based on the evidence, the Panel finds that this allowance is not appropriate and should be deducted from KOC's estimated future costs.

192. KOC requests compensation for replacement costs of US$522,000 for playground equipment and of US$360,000 for trees and plants. The Panel's consultants could not verify the full claim amount for the playground items and advised to the Panel that US$50,000 would be a reasonable replacement cost for these items. The Panel's consultants also advised that the replacement of trees and plants was a small project and therefore proposed the amount of US$50,000 as the reasonable replacement cost for this project. Based on the evidence, the Panel adopts the proposals of its consultants and finds that deductions for replacement costs of US$472,000 and US$310,000 should be made to KOC's estimated future costs.

193. After adjusting for reduced costs and allowance, the Panel finds that KOC's justified estimated future costs for completing the reconstruction of the Ahmadi Township should be US$42,325,900.

(c) Adjustments to future costs

(i) Depreciation

194. KOC proposes a deduction in the amount of US$15,479,400 to future estimated costs to account for accumulated depreciation where older facilities will be repaired or restored with newer equipment.

195. KOC uses a residual value of 15 per cent to calculate depreciation for permanent buildings at the end of their economic life. The Panel finds that this residual value is overstated and that a nominal one per cent residual value should be attributed to property of this nature.

196. After adjusting for the lower residual value for the buildings, the Panel finds that a depreciation deduction of US$21,956,150 should be made to KOC's claim for estimated future costs at the Ahmadi Township.

(d) Adjustments to residual value

197. KOC proposes a residual value of US$23,940,515 for its assets in the Ahmadi Township.

198. KOC uses a residual value of 15 per cent to calculate the remaining life of its assets in the Ahmadi Township. The Panel considers that this residual value is overstated and that a nominal one per cent residual value should be attributed to property of this nature.

199. After adjusting for the lower residual value for these assets, the Panel finds that a deduction of US$19,817,743 should be made to KOC's claim amount for the Ahmadi Township.

200. In summary, the Panel recommends compensation for KOC's claim for the Ahmadi Township in the amount of US$17,356,118, as itemized in the following table:

Table 13. Ahmadi Township recommended compensation

Claim item/adjustment	Claim amount and adjustments (US$)	Panel's recommended adjustments (US$)	Panel's recommended compensation (US$)
(a) Incurred costs	16,804,111		16,804,111
(b) Future costs	46,189,900	(3,864,000)	42,325,900
(c) Adjustments to future costs			
(i) Depreciation	(15,479,400)	(6,476,750)	(21,956,150)
(d) Adjustments to residual values	(23,940,515)	4,122,772	(19,817,743)
Total	23,574,096	(6,217,978)	17,356,118

3. North and South tank farms

201. KOC requests compensation in the amount of US$148,029,763 for losses to physical assets in the North and South tank farms. KOC alleges that the Iraqi forces had wired explosives to the oil and water storage tanks during the occupation and that the detonation of these explosives resulted in fires which either destroyed or damaged the storage tanks. KOC contends that, at the South tank farm, 15 out of 36 crude tanks were damaged or destroyed, and four out of 14 water tanks were destroyed. KOC asserts that, at the North tank farm, eight out of 24 tanks were destroyed or damaged. KOC further states that the Ahmadi tank farm Control Room sustained major damage and that manifolds were either damaged or destroyed. In addition, KOC maintains that there was further damage such as from bullets, shrapnel and blasts resulting from the military hostilities. KOC acknowledges, however, that certain tank farms suffered no structural damage.

202. **Based on the evidence**, the Panel finds that KOC's physical assets in the North and South tank farms have been damaged as alleged by KOC and that this damage is the direct result of Iraq's unlawful invasion and occupation of Kuwait.

203. KOC's calculations are shown in the following table:

Table 14. North and South tank farms claim amounts

Claim item/adjustment	Claimant adjustments (US$)	Claim amount (US$)
(a) Incurred costs		193,864,443
(b) Adjustments		
(i) Betterment	(9,016,410)	(9,016,410)
(ii) Depreciation	(37,964,430)	(37,964,430)
(c) Future costs		1,146,160*
Total	(46,980,840)	148,029,763

* The claimant incorrectly summed this claim element to US$1,146,160; the Panel uses the correct total for this claim amount of US$1,164,160.

(a) Incurred costs

204. KOC first requests compensation in the amount of US$193,864,443 for costs it incurred in repairing and reinstating the physical facilities at its North and South tank farms. Iraq alleges that there is an error in the figures quoted for the cost of tank construction in phase II. Based on its review of the records and other evidence submitted (see paragraphs 85-90, supra), the Panel concludes that KOC's incurred costs are correctly stated and finds, therefore, that such costs are US$193,864,443.

(b) Adjustments to incurred costs

(i) Betterment

205. KOC proposes a betterment deduction of US$9,016,410 to its incurred costs to account for the increase in capacity of the tanks at the North and South tank farms that was achieved during the rebuilding phase. KOC calculates that it achieved a net gain in storage capacity of 793,000 barrels. KOC estimates that, based on actual cost data, the nominal cost for the construction of new tanks was US$11.37 per barrel. Thus, KOC proposes to deduct US$9,016,410 (793,000 barrels x US$11.37 per barrel) from the claim. The evidence presented shows, however, that KOC actually realized an increase in capacity of 843,235 barrels. Applying the per

barrel cost for this additional capacity, the Panel finds therefore, that a deduction in the amount of US$9,587,582 for betterment is justified.

206. Iraq alleges that there should be a further betterment deduction for the net gain in water storage capacity, because some of the tanks were repaired and converted into water tanks. As indicated above, the Panel has taken into account the betterment resulting from increased storage capacity for both water and oil.

(ii) Depreciation deduction

207. KOC also proposes a deduction in the amount of US$37,964,430 to its incurred costs to account for accumulated depreciation where older facilities were repaired or restored with newer equipment.

208. KOC proposes a residual value of 15 per cent to calculate depreciation for the tanks and related equipment at the North and South tank farms. The Panel finds, however, based on information provided by its consultants, that five per cent is the industry norm for the tanks and related equipment at issue.

209. After adjusting for the lower residual value for the tanks and related equipment, the Panel finds that a depreciation deduction of US$45,313,183 should be made to KOC's claim for incurred costs at the North and South tank farms.

(c) Future costs

210. KOC also requests compensation in the amount of US$1,164,160 for the estimated future costs it expected to incur to complete the reconstruction of the North and South tank farms facilities. The Panel's consultants indicated to the Panel that, as a result of a typographic error, KOC stated this amount as US$1,146,160.

211. Based on the evidence, the Panel finds that the estimated future costs for the repair or reinstatement of the remaining facilities are justified.

212. After adjusting for the arithmetical error, the Panel finds that KOC's justified estimated future costs for the North and South tank farms are US$1,164,160.

213. In summary, the Panel recommends compensation for KOC's claim for the North and South tank farms in the amount of US$140,127,838, as itemized in the following table:

Table 15. North and South tank farms recommended compensation

Claim item/adjustment	Claim amount and deductions (US$)	Adjustments to claimant amounts (US$)	Recommended compensation (US$)
(a) Incurred costs	193,864,443		193,864,443
(b) Adjustments to incurred costs			
(i) Betterment	(9,016,410)	(571,172)	(9,587,582)
(ii) Depreciation	(37,964,430)	(7,348,753)	(45,313,183)
(c) Future costs	1,164,160		1,164,160
Total	148,047,763	(7,919,925)	140,127,838

4. Marine facilities

214. KOC requests compensation in the amount of US$97,295,889 for losses to physical assets at its marine facilities. KOC alleges that its marine facilities were damaged or destroyed mainly from aerial bombardment and consequent fires and in particular, that Sea Island, a fixed-platform export facility, was totally destroyed. KOC also alleges that the 48-inch crude and 20-inch bunker fuel pipeline risers connected to the central loading platform at Sea Island were destroyed, severing the export link with KOC's onshore facilities. KOC asserts that it had to divert exports by pipeline to the Single Point Mooring, a previously-decommissioned loading buoy, moored offshore. KOC states that this necessitated urgent repairs and relocation work on Sea Island and the connected pipeline risers, as well as the refurbishment of the Single Point Mooring. KOC alleges that the Single Point Mooring was not recommissioned until May 1993 due to the substantial work required. KOC asserts that, pending completion of these repairs, it had to use alternative options to facilitate the export of oil.

215. KOC alleges that during the occupation, its Small Boat Harbor was used for military operations by the Iraqis and that damage was incurred from misuse, vandalism and looting. KOC states that much of the harbour also suffered damage from missiles and explosives.

216. Iraq alleges that the Single Point Mooring did not suffer any direct damage and therefore, Iraq is not responsible for its rehabilitation.

217. Based on the evidence, the Panel finds that KOC's physical assets at the marine facilities have been damaged as alleged by KOC and that this damage is the direct result of Iraq's unlawful invasion and occupation of

Kuwait. The Panel finds that KOC recommissioned the Single Point Mooring to handle export loading to mitigate its loss with respect to its destroyed Sea Island. Further, the Panel finds that KOC has substituted two continuously-anchored leg mooring buoys (or "CALM buoys"), and intends to add further CALM buoys as its ultimate replacement for Sea Island.

218. Iraq also alleges that there is a possible duplication between the claim for overhead allocation costs and KOC's WBC claim. Based on the evidence, the Panel finds that, in general, possibilities of duplication have been appropriately addressed and accounted for by KOC. To the extent that they have not been addressed, the Panel will specifically indicate that and make adjustments as it deems appropriate.

219. KOC's calculations are shown in the following table:

Table 16. Marine facilities claim amounts

Claim item/adjustment	Claimant's adjustments (US$)	Claim amount (US$)
(a) Incurred costs		46,486,934
(b) Future costs		100,487,387
(c) Adjustments to future costs		
(i) Depreciation	(49,678,432)	(49,678,432)
Total	(49,678,432)	97,295,889

(a) Incurred costs

220. KOC first requests compensation in the amount of US$46,486,934 for costs it incurred in repairing and reinstating the physical facilities at its marine facilities. Based on their review of the records and other evidence submitted (see paragraphs 85-90, supra), the Panel concludes that KOC's incurred costs are correctly stated and finds, therefore, that such costs are US$46,486,934.

(b) Future costs

221. KOC also requests compensation in the amount of US$100,487,387 for the estimated future costs it expected to incur to complete the reconstruction of the marine facilities. This claim includes the estimated costs of reinstating both Sea Island (US$82,797,387) and the Small Boat Harbour (US$2,510,000), as well as the estimated costs of removing the debris of Sea Island (US$15,180,000).

222. Iraq asserts that the assessment of overhead costs (comprising percentages of escalation and contingency costs) for KOC's marine facilities and the average service life of Sea Island are overstated.

223. Based on the evidence and taking into consideration Iraq's arguments, the Panel finds that the estimated future costs for the repair or reinstatement of the marine facilities are justified, subject to the adjustments described below.

224. The Panel finds, however, that KOC's estimates to replace Sea Island are overstated. KOC estimates that the future replacement cost of Sea Island would be US$82,797,387. KOC estimated the cost to replace the facility using 1994 prices escalated to reflect the time needed for reconstruction. The evidence indicates, however, that KOC has not rebuilt Sea Island nor does it intend to do so. In fact, KOC has adopted a new, more costly method for loading ships, the CALM buoys discussed in paragraph 217, supra. For this reason, the Panel finds that the appropriate measure of KOC's loss for Sea Island would be the replacement cost of Sea Island at the date of loss, which the Panel finds is 2 August 1990, the date that KOC lost possession of the facility, plus the costs of removing the debris from the destroyed facility. The Panel finds that this measure of damage, rather than the future costs to repair Sea Island as used in the claim, is the appropriate measure, because KOC does not intend to repair Sea Island. The Panel therefore finds that KOC's claim for estimated future cost for the replacement of Sea Island should be decreased to US$66,228,328, which is the replacement cost of Sea Island on 2 August 1990 plus the costs of debris removal.

225. KOC estimates that the cost of debris removal from Sea Island would be US$15,180,000. The Panel finds that such costs are compensable as they are a direct consequence of Iraq's unlawful invasion and occupation of Kuwait. KOC estimates that debris removal would continue through 1996 and prices the operation using estimated 1996 prices. In fact, KOC has not removed the remaining structures from the site and has incorporated a portion thereof into the new loading system. Thus, any delay in debris removal is attributable to the claimant's decision to continue to use portions of the structure. The Panel finds that there is no basis for delay of the debris removal beyond 1994. Accordingly, the Panel estimates the costs of debris removal as of the end of 1994, the latest reasonable date for completion of the removal. Based on industry norm, the Panel's consultants calculate that the 1994 removal costs would have been US$12,000,000, and therefore finds that KOC's estimated cost of debris removal should be reduced to this amount.

226. KOC estimates the repair costs to the Small Boat Harbor to be US$2,510,000. Based on the review of the records and other evidence

submitted, the Panel concludes that KOC's estimates of the repair costs are justified.

227. After adjusting for lower estimates of costs, the Panel finds that KOC's estimated future costs for the reconstruction of the marine facilities, including debris removal from Sea Island should be US$80,738,328.

(c) Adjustments to future costs

(i) Depreciation

228. KOC proposes a deduction in the amount of US$49,678,432 to its claim for future estimated costs to account for accumulated depreciation where older facilities will be repaired or restored with newer equipment.

229. KOC uses a residual value of 15 per cent to calculate the depreciation for the Sea Island. The Panel finds however, based on information provided by its consultants, that five per cent is the industry norm for assets permanently fixed in offshore locations.

230. After adjusting for the lower residual value for the Sea Island Complex and the replacement cost for Sea Island, the Panel finds that a total depreciation deduction of US$46,359,830 should be made to the claim for future costs of the marine facilities.

231. In summary, the Panel recommends compensation for KOC's claim for the marine facilities in the amount of US$80,865,432, which is itemized in the following table:

Table 17. Marine facilities recommended compensation

Claim item/adjustment	Claim amount and deductions (US$)	Panel's adjustments to claimant amounts (US$)	Panel's recommended compensation (US$)
(a) Incurred costs	46,486,934		46,486,934
(b) Future costs	100,487,387	(19,749,059)	80,738,328
(c) Adjustments to future costs			
(i) Depreciation	(49,678,432)	3,318,602	(46,359,830)
Total	97,295,889	(16,430,457)	80,865,432

5. Ras-Al-Zoor

232. KOC requests compensation in the amount of US$77,634,000 for losses to physical assets at its Ras Al-Zoor gas processing facility, extra storage charges incurred for its offshore facility and looted engineering spares from its stores. Early in 1980, KOC undertook a project ("the Southern Gas Project") to utilize gases that were being flared and lost offshore from the Hout and Khafji fields in the Arabian Gulf.

233. In the Southern Gas Project, the flared gases were to be gathered and compressed at a new offshore compression platform ("Offshore Facility") and transmitted to a new acid gas removal and sulphur recovery plant at Ras-Al-Zoor ("Onshore Facility") through a submarine pipeline. On 23 February 1983, KOC contracted with Technip International AG ("Technip") to construct the Southern Gas Project facilities, onshore and offshore. Technip subcontracted with Daewoo Shipbuilding and Heavy Machinery Limited ("Daewoo") to construct the Offshore Facility on 2 August 1983. The new Offshore Facility was to be linked to the existing offshore facility in the Arabian Gulf. The Southern Gas Project was due to be completed on 10 May 1985. Certain disputes delayed the completion of the project, however, and by 1988, only the Onshore Facility had been substantially completed. Disputes arose between Technip and Daewoo relating to their contract concerning the Offshore Facility. These disputes were submitted to arbitration in December 1987 and were resolved by a settlement agreement in September 1988 in which Daewoo agreed to enter directly into a contract with KOC on 24 September 1988 relating to the Offshore Facility.

234. During Iraq's unlawful invasion and occupation of Kuwait, KOC alleges that the Onshore Facility was almost totally destroyed by demolition blasts. KOC also alleges that a portion of the pipes purchased to construct the link with the Offshore Facility was stolen by the Iraqi forces. KOC states that a portion of the stolen pipes was subsequently retrieved and used in the firefighting effort in Kuwait following liberation. As a result, KOC alleges that this portion of the pipes could no longer be used as a gas transmission pipeline. KOC further states that the remainder of the stolen pipes was recovered and subsequently used in Wafra to link facilities as part of the reinstatement process.

235. Prior to Iraq's unlawful invasion and occupation of Kuwait, although the Offshore Facility had already been fabricated by Daewoo, KOC alleges that it was not transported and installed due to a lack of access to the offshore site in Saudi Arabia. The Offshore Facility remained in Daewoo's yard in Okpo, South Korea under an agreement that KOC would pay storage charges to Daewoo. KOC alleges that but for the invasion, the Offshore Facility would have been moved from South Korea to Kuwait by August/September 1991. KOC alleges that on 29 November 1989 it issued invitations to tender to load out the Offshore Facility and that

installation was expected to be completed in 1991. KOC asserts that prospective contractors' bids were submitted to Arabian Oil on behalf of the joint venture in May 1990, but that by June 1990, representatives of the Governments of Kuwait and Saudi Arabia in a Joint Executive Committee Meeting for the Southern Gas Project were still unable to agree on the bids. KOC states that there was a possibility of retendering and further discussion, but that by August 1990, Kuwait was invaded by Iraq and negotiations halted. KOC alleges that as a result of the delay caused by Iraq's unlawful invasion and occupation of Kuwait, KOC incurred additional storage charges for 31 months from August/September 1991 to March/April 1993 with respect to the Offshore Facility.

236. KOC also alleges that some engineering spare parts which were required for its Offshore Facility were looted from KOC's stores during the occupation.

237. Based on the evidence, the Panel finds that KOC's physical assets at Ras Al-Zoor have been damaged as alleged by KOC and that this damage is the direct result of Iraq's unlawful invasion and occupation of Kuwait.

238. This claim element is composed primarily of KOC's estimated reinstatement cost for the Onshore Facility. In addition, KOC requests compensation for the charges it incurred to store the Offshore Facility at the South Korean yards of the manufacturer beyond the expected delivery date. KOC also requests compensation for stocks of engineering spares that it claims were lost as a result of the invasion. KOC's calculations are shown in the following table:

Table 18. Ras Al-Zoor/Southern gas project claim amounts

Claim item/adjustment	Claim amount (US$)
(a) Onshore Facilities	58,445,000
(b) Offshore Facility storage charges	17,975,000
(c) Engineering spares	1,214,000
Total	77,634,000

(a) Onshore Facility

239. KOC requests compensation in the amount of US$58,445,000 for the reinstatement of the Onshore Facility. This amount includes a replacement cost of US$57,071,000, cost of debris removal of US$4,074,000, and a depreciation deduction of US$2,700,000 to account for certain assets related to the Onshore Facility which were replaced, such as the pier,

roads and drainage. KOC calculates this claim amount using the original construction costs, uplifted for inflation to prices in 1996, the date when KOC alleges it could have replaced the Onshore Facility. From this, KOC subtracts the value of certain items that were undamaged or were capable of salvage and adds an allowance for debris removal.

240. Iraq alleges that the Onshore Facility at Ras-Al-Zoor was actually destroyed by heavy bombardment by the USS MISSOURI (a warship of the United States Navy) and not by demolition blasts as claimed by KOC.

241. Although the Onshore Facility at Ras-Al-Zoor might have been destroyed by the USS MISSOURI as alleged by Iraq, the Panel finds that consistent with paragraph 21 (a) of Governing Council decision 7, Iraq's liability includes any direct loss, damage or injury suffered as a result of "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991." (Emphasis added). Consequently, the Panel finds that, consistent with the Panel's decision in the WBC Claim, supra, paragraph 86, Iraq is liable for any direct loss, damage or injury whether caused by its own or by the coalition armed forces. Therefore, the Panel finds that it is irrelevant whether the Onshore Facility at Ras-Al-Zoor was damaged by Iraq or the coalition armed forces.

242. Iraq also disputes that the Onshore Facility was ever in operation, even though it was completed by 1988, due to a lack of access to the offshore site as mentioned in the KOC claim. Iraq also challenges the viability of the Southern Gas Project based on the sequence of events for the project construction and the eventual decision to cancel the project in 1996. For this reason, Iraq asserts that only the residual value of the Onshore Facility should be considered relevant for the valuation of this claim.

243. Based on the evidence and taking into account Iraq's arguments, the Panel finds that the Onshore Facility was damaged as described by KOC and has not been reinstated. The Panel also finds that KOC has abandoned its plans for the Southern Gas Project and has no intention of reinstating the Onshore Facility. Because the facility will not be reinstated, the Panel finds that the proper method of valuing KOC's loss in respect of this asset is the replacement cost on the date of loss, 2 August 1990, not the reinstatement cost in 1996.

244. KOC also makes no deduction for betterment or depreciation to the replacement cost of the Onshore Facility, arguing that because it was unused on 2 August 1990, no reductions for betterment or depreciation are warranted. The Panel concludes that some allowance should be made to account for the deterioration the plant would have suffered from

its exposure to the elements and for the likely betterment that KOC would have achieved from technical enhancements available on the date of replacement. The Panel finds, therefore, that an allowance should be made for depreciation and betterment.

245. Based on the revised replacement date and the allowance of depreciation and betterment deductions, the Panel finds that the appropriate replacement cost for the Onshore Facility should be reduced from US$57,071,000 to US$37,030,805.

246. KOC's estimated cost of debris removal of US$4,074,000 makes no allowance for the scrap value of the Onshore Facility. Because the Onshore Facility was not operational at the time of the invasion, it had no contamination problems with which to contend. Thus, the Panel considers that much of the Onshore Facility could have been sold as scrap and finds, therefore, that KOC's cost of debris removal should be reduced to US$1,500,000 to account for the scrap value of the Onshore Facility.

247. KOC proposes a depreciation deduction of US$2,700,000 to account for accumulated depreciation from the date of the invasion to the replacement date on certain assets related to the Onshore Facility, such as the pier, roads and drainage. Because the Panel bases its loss calculation on the fact that KOC will not replace the Onshore Facility, these assets would have almost no value to KOC. Thus, the Panel finds that KOC's depreciation deduction should be decreased to US$50,000.

248. Based on the foregoing calculations, the Panel finds that US$38,480,805 is the appropriate level of compensation for this claim element.

(b) Offshore Facility storage charges

249. KOC also requests compensation in the amount of US$17,975,000 for storage charges paid to Daewoo for the Offshore Facility constructed by Daewoo and stored at its South Korean yards.

250. KOC calculates this claim element as 31 months of storage charges - the period from August 1991, when KOC claims it could have accepted delivery of the platform but for Iraq's unlawful invasion and occupation of Kuwait, to March 1994, the date KOC claims is the earliest it could have accepted delivery of the platform following liberation.

251. The Panel finds that KOC did incur storage charges in respect of the Offshore Facility and that the ultimate delivery of the platform would have occurred, if at all, later as a result of the invasion. The evidence suggests, however, that at least some of the delays in delivery of the platform are attributable to KOC's own decision ultimately to abandon the

Southern Gas Project. Using KOC's estimates of the time needed to arrange transportation and installation contracts for the platform, the Panel concludes that 14 months is the longest delay reasonably attributable to the effects of Iraq's unlawful invasion and occupation of Kuwait and finds that KOC's estimated storage charges should be decreased to US$8,050,000.

(c) Engineering spares

252. KOC requests compensation in the amount of US$1,214,000 for the loss of engineering spare parts stored at the Ras Al-Zoor complex for use in the Southern Gas Project. KOC calculates this amount as the acquisition cost of these spares, US$906,000, adjusted for inflation to the estimated replacement date of the Ras Al-Zoor Facility in 1996.

253. The Panel finds, however, that the replacement date of the Ras Al-Zoor facility has no bearing on the date on which the spares could have been replaced. Accordingly, the Panel estimates that the replacement cost for the engineering spares on 2 August 1990 would have been US$1,034,380, and finds, therefore, that KOC's estimates for the cost of its engineering spare parts should be decreased to this amount.

254. In summary, the Panel recommends for KOC's claim for the Ras Al-Zoor facility in the amount of US$47,565,185, which is itemized in the following table:

Table 19. Ras Al-Zoor/Southern gas project recommended compensation

Claim item/adjustment	Claim amounts (US$)	Panel's adjustments to claim amounts (US$)	Panel's recommended compensation (US$)
(a) Onshore Facility	58,445,000	(19,964,195)	38,480,805
(b) Offshore Facility storage charges	17,975,000	(9,925,000)	8,050,000
(c) Engineering spares	1,214,000	(179,620)	1,034,380
Total	77,634,000	(30,068,815)	47,565,185

6. Projects under construction/consideration

255. KOC requests compensation in the amount of US$66,652,479 for damage to physical assets related to its projects under construction or consideration. At the time of the invasion, KOC states that it was pursuing a number of projects, including projects of building a gas

pipeline and installing desalters. KOC alleges that each of these projects was delayed or interrupted by Iraq's unlawful invasion and occupation of Kuwait when Iraqi forces took control of all of KOC's facilities. KOC also alleges that during this period, the construction materials for one of its projects were looted by Iraqi forces. KOC further alleges that it will incur increased costs to resume these projects.

256. Prior to 2 August 1990, KOC started a project to construct a 12-inch gas transmission pipeline ("the Gas line project") to transport all acid/sour gas from K-NEW in West Kuwait to the Kuwait National Petroleum Company acid recovery plant at Shuaiba. Work had commenced on 16 December 1989 and as of 2 August 1990, the Gas line project was 59 per cent complete, the materials had been issued to the project and a substantial amount of money had been paid by KOC to the contractor.

257. Prior to 2 August 1990, KOC asserts that it had planned the Desalter Phase IV project to equip the gathering centres, which involved the design, supply, construction and commissioning of a twin train dehydration and desalting plant, the installation of a new control room and the construction of flowlines. KOC further asserts that prior to 2 August 1990, invitations to tender had been issued, a pre-tender meeting had taken place on 15 July 1990 and bids were due by 16 September 1990. KOC alleges that the Desalter Phase IV project would have been completed by 31 December 1992 but for Iraq's unlawful invasion and occupation of Kuwait.

258. KOC provides an affidavit that describes KOC's expenses that were incurred on the Gas line project and the budget to which KOC had committed for the Desalter Phase IV project. In support of the statement, KOC produces relevant contracts for the projects and other internal documentation such as revisions of authorizations for expenditures. The damage sustained by the facilities under construction is described in KOC's consultants' reports and an affidavit.

259. Based on the evidence, the Panel finds that KOC's physical assets for use in the Gas line project were removed by Iraqi forces, that the Gas line project was delayed as alleged by KOC and that this damage is the direct result of Iraq's unlawful invasion and occupation of Kuwait.

260. This claim element is composed of (a) a claim for loss of materials, cost of reworking and price escalation for remaining work on the Gas line project and (b), the cost of completing the Desalter Phase IV project.

Table 20. Projects under construction/consideration claim amounts

Claim item/adjustment	Claim amount (US$)
(a) Gas line project	1,510,239
(b) Desalter Phase IV project	65,142,240
Total	66,652,479

(a) Gas line project

261. KOC requests compensation in the amount of US$1,510,239 for the Gas line project. KOC claims that materials worth US$968,000 issued for the project were stolen and that, applying a price escalation of 12 per cent it incurred a loss of US$1,084,160. Based on contract bids, KOC also claims US$264,165 for reworking costs. Based on price differences between the original contract prior to the invasion and quotations received after liberation, KOC claims US$161,914 for increased costs for completing the remaining works.

262. Iraq alleges that the original cost of materials is not ascertained by a neutral party and that KOC's inaction and lack of decision contributed to the period of delay on which the escalation factor is based. Iraq also argues that KOC's claim for reworking cost is not supported by evidence.

263. Based on the evidence, the Panel finds that the contract for the installation of the gas transmission line was operational prior to Iraq's unlawful invasion and occupation of Kuwait. The Panel also finds that based on industry standards, the original cost of materials is reasonable. The Panel further finds that the period of delay was justified under the circumstances in which KOC had to resume its operations and prioritise certain vital operations over others. In addition, the Panel finds that there was sufficient evidence to demonstrate that the contract was activated with additional expenditure called "reworking cost" as described in KOC's claim. The Panel finds, therefore, that KOC's claim for US$1,510,239 for the Gas line project is justified.

(b) Desalter Phase IV project

264. KOC requests compensation in the amount of US$65,142,240 for financial losses incurred as a result of delays in completing the Desalter Phase IV project and general price escalations resulting from the delays. KOC estimated the cost of this project to be US$171,500,100 based on the actual costs incurred on a similar project with adjustments for scope of the projected work. The contract for the Desalter Phase IV project was

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awarded in November 1992 for US$236,642,340 and KOC claims for the increased cost to complete it.

265. Iraq contends that KOC's claim for the Desalter Phase IV project is not supported by evidence and that the alleged losses are indirect since the project was still in the planning stage during the relevant period.

266. Based on the evidence and taking into account Iraq's arguments, it was clear to the Panel that on 2 August 1990, the project was still in its planning phase, as bids had not yet been received from invited parties for the project and KOC had not committed itself to any expense or liability towards a third party. Accordingly, the Panel agrees with Iraq and finds that KOC has not suffered a loss on this project that directly resulted from Iraq's unlawful invasion and occupation of Kuwait. For this reason, the Panel does not recommend compensation for KOC's claim concerning the Desalter Phase IV project.

267. In summary, the Panel recommends compensation for KOC's claim for projects under construction or consideration claim element in the amount of US$1,510,239, which is itemized in the following table:

Table 21. Projects under construction/consideration recommended compensation

Claim item/adjustment	Claim amounts (US$)	Panel's adjustments to claim amounts (US$)	Panel's recommended compensation (US$)
(a) Gas line project	1,510,239	0	1,510,239
(b) Desalter Phase IV project	65,142,240	(65,142,240)	0
Total	66,652,479	(65,142,240)	1,510,239

7. Well Blowout Control programme and other physical assets

268. KOC requests compensation in the amount of US$407,548,924 consisting of US$70,930,634 for losses to other physical assets and US$336,618,290 for costs related to its Well Blowout Control ("WBC") programme, Al-Awda.

269. KOC's other physical assets include marine craft, heavy plant vehicles, machinery and equipment, vehicles, furniture, documents, stocks and spares (such as oil well casing, tubing, pumps, compressors and turbines). KOC alleges that these assets were stolen, damaged and neglected during the invasion and occupation of Kuwait. KOC also alleges

that some of its marine craft were damaged by explosions and missiles in military activities during the occupation. The amount claimed for KOC's other physical assets is made up of the replacement costs of these assets, with the exception of certain marine craft and heavy plant vehicles.

270. The WBC costs include capital expenditures, freight charges and sundries/consulting costs that were transferred from the WBC Claim to the present claim.

271. In relation to the WBC claim, KOC subtracts amounts it calls "adjustments" to account for residual values of certain physical assets that it had used in its reconstruction works.

272. Iraq contends that the residual value of assets purchased in connection with the WBC claim was incorrectly included in KOC's other physical assets claim element.

273. Taking into account the structure of KOC's claim and Iraq's argument, the Panel finds that the residual values of assets purchased in connection with the WBC claim and the well blowout control costs should be considered together within one claim element and therefore, groups these items within the present claim element.

274. KOC's calculations are shown in the following table:

Table 22. WBC costs and other physical assets claim amounts

Claim item/adjustment	Claimant's adjustments (US$)	Claim amount (US$)
(a) Well blowout control costs		336,618,290
(b) Other physical assets		118,631,260
(c) Residual value adjustments		
(i) Heavy plant vehicles and other assets	(38,761,169)	(38,761,169)
(ii) Modular buildings	(8,939,457)	(8,939,457)
Total	(47,700,626)	407,548,924

(a) Well blowout control costs

275. KOC planned the restoration of its facilities before the liberation of Kuwait. Three phases of the restoration programme were implemented by KOC: Al Awda, Al Tameer and Phase III. The Al Awda phase of the reconstruction effort focused on well blowout control operations and

supporting firefighters' access to the wells and clearing ordnance. The last of the burning wells was capped in November 1991. This phase also aimed to restore production as quickly as possible to a level sufficient to meet Kuwait's domestic oil requirements and to end the need to import oil from abroad.

276. KOC submitted a separate claim to the Commission for US$950,715,662 for the expenses incurred in its well blowout control efforts (this claim is referred to as the WBC claim in paragraph 82, supra). In the report on the WBC claim, the Panel recommended that KOC receive compensation in the amount of US$610,048,547 in respect of that claim, but declared that US$337,612,725 of the WBC claim amount should be transferred and considered under KOC's other categories of claim. As a result, KOC amended its present physical assets claim to reflect the Panel's recommended distribution of claim elements. The majority of the transferred amount appears in the present claim as capital expenditures, freight charges and sundries/consulting costs amounting to US$336,618,290. The remaining US$994,435 of the transferred amount was characterized as costs directly relating to a separate claim by KOC, the Removal of Unexploded Ordnance and Environmental Damage Claim, and will accordingly be considered by the Commission in that connection.

277. In the report on the WBC claim, the Panel determined that the claim for capital expenditure is subject to adjustment for residual value of tangible assets used during the well blowout control operations and other restoration projects which have since been retained by KOC as assets operating in the business. An adjustment for such contingency is reflected in this claim element. Because of the situation prevailing in Kuwait immediately after the liberation, the claimant's records do not permit it to specify the phase of the reconstruction project to which the cost of a particular tangible asset should be allocated. As a result, the adjustments discussed under the heading "residual value adjustments" (see paragraphs 289-292, infra) include the adjustments for those assets whose costs were included in the WBC claim as well as for those assets whose costs are included in the "other physical assets" claim (see paragraphs 281-288, infra). Because the adjustments are dealt with elsewhere, the Panel has assessed and verified the costs of this claim element on a strictly gross basis.

278. KOC allocated 100 per cent of its sundry/consulting costs to the physical assets claim. In the WBC claim, the Panel had recommended allocation of these costs across KOC's present physical assets claim and the Removal of Unexploded Ordnance and Environmental Damage Claim. After review of the evidence in support of the present claim, however, the Panel is satisfied that KOC has demonstrated that the vast majority of these costs are related to KOC's physical assets and less than one per cent of the costs are related to KOC's other claims. For this reason the Panel finds that the sundry/consulting costs are correctly allocated in this claim.

279. KOC provides evidence concerning the preparations for and implementation of Al-Awda in a number of affidavits that were submitted in support of the WBC claim. In addition, KOC provides contracts with Bechtel which outline the scope of Bechtel's responsibilities. In this connection, the Panel examined the evidence of costs incurred in this claim element by using the verification procedures employed in the WBC claim.

280. Based on their review of the records and other evidence submitted, the Panel concludes that the claim amount for the WBC claim element has been transferred from the WBC claim as directed and considers the amount claimed to be justified. The Panel finds therefore, that KOC costs related to its WBC programme, Al Awda are US$336,618,290.

(b) Other physical assets

281. KOC requests compensation in the amount of US$118,631,260 for the replacement costs of its other physical assets.

282. Iraq alleges that KOC has not tried to ascertain whether the assets were indeed damaged or who was actually responsible for the damage and loss. Iraq also alleges that the relevant inventories were not submitted by KOC, that there are inadequate details on each asset such as its job number, location, repair information and condition. Iraq further argues that replacement estimates that are based on assumptions are not permissible.

283. Based on the evidence, the Panel finds that the assets itemized in KOC's other physical assets claim were in its possession on 2 August 1990 and have been stolen or damaged as alleged by KOC. The Panel further finds that this loss is the direct result of Iraq's unlawful invasion and occupation of Kuwait.

284. KOC uses a residual value of 10 per cent, amounting to US$18,638,528, to calculate depreciation for KOC's machinery and equipment. The Panel finds, however, based on information provided by its consultants, that five per cent is the industry norm for the machinery and equipment at issue. The Panel finds, therefore, that KOC's residual value for its machinery and equipment should be reduced by the amount of US$3,524,291 to US$15,114,237.

285. KOC uses a residual value of 20 per cent, amounting to US$8,278,865, to calculate depreciation for its trucks. The Panel finds, however, based on information provided by its consultants, that a 10 per cent residual value is the industry norm for the trucks at issue. The Panel finds, therefore, that KOC's residual value for its trucks should be reduced by the amount of US$2,760,319 to US$5,518,546.

286. KOC requests compensation in the amount of US$10,078,662 for the replacement and repair costs of its marine craft. The Panel's consultants were of the opinion that based on industry practice, KOC's claim for marine crafts should be based on their insured value rather than their replacement cost. The Panel therefore concluded that KOC's methodology of deducting damage allowances was acceptable, if the deductions were made from the insurance value of the marine crafts rather than their replacement costs. The Panel finds that the repair costs for the marine craft were actually incurred and justified, based on the invoices produced by KOC. After adjustments are made based on the insurance value of the marine craft and deductions are made for damage allowances and sale proceeds, the Panel finds that KOC's replacement and repair costs of its marine craft should be reduced by the amount of US$450,014 to US$9,628,648.

287. KOC requests compensation in the amount of US$73,405,656 for the replacement costs of its stocks and spares. Based on the evidence, the Panel finds that the replacement costs of KOC's stocks and spares are justified. The evidence supports a value of US$61,556,868 for KOC's stocks and spares and the Panel concludes that the six per cent price escalation and a two per cent normal inventory reduction applied by KOC are reasonable. The Panel did not, however, make any adjustments either for unrecorded receipts of material prior to Iraq's unlawful invasion and occupation of Kuwait or for items written off and later found, as these could not be verified. Taking into account the adjustments discussed above, the Panel finds that KOC's replacement costs of its stocks and spares should be reduced by the amount of US$12,210,455 to US$61,195,201.

288. The Panel finds, therefore, that the total of KOC's replacement costs for its other physical assets should be reduced by the aggregate amount of US$18,945,079 to US$99,686,181.

(c) Residual values

289. These residual values relate to the assets that were acquired by KOC for the WBC claim project and the reconstruction phases that followed, referred to by KOC as Al Awda and Al Tameer respectively. The capital costs for these assets were included in the report on the WBC claim. Further to instructions by the Panel, in this claim KOC made deductions for residual values as KOC still possessed these capital assets after the completion of these projects and had the ability to sell these assets. Capital assets were also acquired by KOC after the period of the report on the WBC claim and KOC made further deductions for the residual values of these assets.

(i) Heavy plant vehicles and other assets

290. KOC proposes an overall deduction to its claim for the residual value of its heavy plant vehicles and other assets in the amount of

US$38,761,169. The Panel agrees that the cost of assets and deductions for assets obtained as a direct replacement for KOC's lost assets is justified. KOC applied a composite market factor of 38 per cent to all the assets to reflect the costs of disposal and the circumstances which KOC was facing at the time. The Panel considers that further deductions to allow for the locations and quantities of the assets should be made. Based on this reasoning, the Panel applies a modified factor of 28 per cent. Taking into account the adjustments discussed above, the Panel finds that a deduction of US$60,295,152 should be made for the residual value of KOC's heavy plant vehicles and other assets.

(ii) Modular buildings

291. KOC proposes a deduction in the amount of US$8,939,457 for the residual value of it modular buildings. Based on its review of the records and other evidence submitted, the Panel concludes that the deduction for the residual value of the modular buildings was justified and finds, therefore, that KOC's residual value deduction for its modular buildings is US$8,939,457.

292. In summary, the Panel recommends compensation for KOC's claim for well blowout control costs and other physical assets in the amount of US$367,069,862, which is itemized in the following table:

Table 23. WBC costs and other physical assets recommended compensation

Claim item/adjustment	Claim amount and deductions (US$)	Panel's adjustments to claimant amounts (US$)	Panel's recommended compensation (US$)
(a) Well blowout control costs	336,618,290	0	336,618,290
(b) Other physical assets	118,631,260	(18,945,079)	99,686,181
(c) Residual value adjustments			
(i) Heavy plant, vehicles, and other assets	(38,761,169)	(21,533,983)	(60,295,152)
(ii) Modular buildings	(8,939,457)	0	(8,939,457)
Total	407 548,924	(40,479,062)	367,069,862

8. Post Well Capping - Al Tameer

293. KOC requests compensation in the amount of US$202,161,869 for its costs related to its well post capping programme, Al Tameer. When the Al Awda project was completed in November 1991, the project was renamed Al

Tameer. The Al Tameer project focused on reconstructing KOC's operational networks to achieve pre-invasion production levels. This involved workover operations and drilling new wells; repairs and rehabilitation of damaged gathering centres, desalters and gas booster stations, as well as buildings and utilities in the oil fields; and the reconstruction of Ahmadi Township and of oil networks. By March 1993, post-capping work on 779 wells was complete. The Al Tameer project ended in June 1993.

294. KOC provides in an affidavit a detailed description of work done during the Al Tameer project. KOC also provides its consultant's assessment of well post capping costs based on figures in KOC's general ledger, job cost summaries and a well workover cost system. Well post capping costs were given specific general ledger account numbers and job cost numbers, which were included in the WBC claim. Well workover costs relating to KOC's post capping costs were recorded in KOC's well workover job cost system, which contained a unique job number for each well.

295. KOC's consultants identified post capping costs by reviewing documents relating to KOC's general ledger and job numbers to ensure that costs were properly allocated. KOC also proposed adjustments to reflect double counting and a contract dispute. Based on this review, KOC deducted US$25,654,763 which it considered to be part of well blowout control costs, from a total of US$58,757,992 of its incurred costs for this claim element resulting in a claim for well post capping costs of US$33,103,229.

296. KOC's consultants identified well workover costs by comparing the well workover costs in the well workover job cost system and well workover costs in KOC's Drilling Register Report, which contains data on incurred workover costs for each well as a result of post well capping operations. KOC's consultants deducted KOC salaries from these costs, resulting in the amount of US$169,058,640.

297. Based on their review and other evidence submitted, the Panel concludes that the approach of KOC's consultants in preparing the claim and the deductions made by KOC were reasonable. The Panel also considers that there should be no deductions for betterment or depreciation as these costs related to temporary works and therefore did not extend the life of existing assets. The Panel finds, therefore, that KOC's costs for the Al Tameer project is US$202,161,869.

298. In summary, the Panel recommends compensation for KOC's claim for its post well capping programme known as the Al Tameer project in the amount of US$202,161,869.

9. Phase III

299. KOC requests compensation in the amount of US$54,904,490 for restoration costs related to its Phase III programme. The Phase III was a

restoration programme that began in July 1993. The programme is supposed to continue until the completion of KOC's restoration work. The restoration work was no longer being undertaken on an emergency basis in this phase. KOC claims for the project management costs associated with restoration works which have been incurred since the end of the Al-Tameer project plus the related future costs to complete the restoration.

300. KOC provides an affidavit that describes the project management work done in Phase III by another consultancy, Ralph M. Parsons ("Parsons"), which took over from Bechtel in June 1993. KOC also provides a supplemental assessment by its consultants to show that Parsons was also responsible for project management of restoration work up to October 1996. KOC also relies on this assessment as evidence of costs. In addition, KOC provides a copy of its contract with Parson describing the scope of Parson's responsibilities.

301. KOC's consultants analyzed costs incurred with Parsons from the inception of the contract in October 1993 to July 1994, the point at which KOC's physical loss assessment was made. These costs were then projected to the end of the contract in 1996. KOC's consultants made a deduction of 10 per cent from the total to reflect elements of Parson's work which might not relate to restoration projects during the term of the contract, reducing the estimated total cost of US$61,004,988 to US$54,904,490.

302. Based on the evidence, the Panel concludes that Parson's services were required to complete the restoration work and were essential, given KOC's small in-house project management capability. The Panel compared Parson's fees to KOC's overall estimated future works outstanding as at 1994, reported by KOC's consultants to be US$529,575,596. Based on this comparison, the Panel considers that Parson's fees, which amounted to 12 per cent of KOC's overall estimated future works, were justified. The Panel also considered that a 10 per cent deduction for non-restoration fee work was justified. The Panel finds, therefore, that KOC's costs for Phase III are US$54,904,490.

303. In summary, the Panel recommends compensation for KOC's claim for restoration costs related to its Phase III programme in the amount of US$54,904,490.

10. Reconstruction of the Magwa road/replacement of crude line no. 5

304. KOC requests compensation in the amount of US$932,070 for damage allegedly incurred on a 10 kilometre road, the Magwa road, that runs from the north of Ahmadi Township to a public road network.

305. KOC also requests compensation in the amount of US$1,630,031 for a portion of the costs associated with replacing a transit line which ran between two manifolds, referred to as crude line no. 5.

306. KOC submitted the Magwa road and replacement of crude line no. 5 claims six months after the one year period of review had begun. Based on the nature of these claims and the circumstance in which they were submitted, the Panel finds that the required claim review and physical verification of these claims were not possible if the claims review process were to proceed and be completed in a comprehensive manner within the stipulated time. The Panel finds therefore that introducing these claims as part of KOC's Claim at such a late stage would disrupt and be detrimental to the Panel's one-year claims review process. As a result, the Panel finds that KOC's claims for the Magwa road and replacement of crude line no. 5 are not timely filed, and the Panel will not consider them as supplements to KOC's Claim.

307. In summary, the Panel recommends no compensation for the reconstruction of Magwa road and replacement of crude line no. 5 claim elements.

11. Summary of recommendation

308. The Panel recommends total compensation be awarded to KOC in the amount of US$2,216,550,792 as itemized in the following table:

Table 24. Summary - Kuwait Oil Company recommended compensation

Claim element	Claim amounts (US$)	Panel's recommended compensation (US$)
1. Oil fields:		
(a) South East oil fields	829,245,481	781,560,833
(b) West oil fields	190,643,380	165,227,583
(c) North oil fields	359,789,088	318,162,942
(d) Wafra oil fields	52,854,617	40,038,401
2. Ahmadi Township	23,574,096	17,356,118
3. North and South tank farms	148,029,763	140,127,838
4. Marine facilities	97,295,889	80,865,432
5. Ras Al Zoor - Gas facility	77,634,000	47,565,185
6. Projects under construction/ consideration	66,652,479	1,510,239
7. Well blowout control - Al Awda & other physical assets	407,548,924	367,069,862
8. Post well capping - Al Tameer	202,161,869	202,161,869
9. Phase III	54,904,490	54,904,490
10. Reconstruction of the Magwa Road/	932,070	0
Replacement of crude line no.5	1,630,031	0
Total	2,512,896,177	2,216,550,792

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VI. CLAIM OF KUWAIT PETROLEUM CORPORATION (CLAIM NO: 4003198)

A. Nature of claim

1. Facts and contentions

309. Kuwait Petroleum Corporation ("KPC") is owned by the State of Kuwait ("Kuwait"), and acts as a holding company for all Kuwaiti petroleum and petrochemical sector companies operating in Kuwait and abroad. KPC also markets and sells crude oil and petroleum products. KPC operates mainly through its two wholly-owned subsidiaries Kuwait Oil Company ("KOC") and Kuwait National Petroleum Corporation ("KNPC"). The structure of the Kuwaiti oil industry and the roles of KPC, KOC and KNPC within it are explained in more detail in paragraphs 77-78, supra. KPC pays Kuwait's Ministry of Oil for the crude oil and products produced by KOC and KNPC and subsequently markets and sells the crude oil and products. Ownership of Kuwait's crude oil passes to KPC by way of sale. KPC pays a Transfer Price agreed between KPC and the Kuwait Ministry of Oil. The Transfer Price is supposed to reflect international market levels, but it is adjusted for costs of production, transportation and export. KPC retains the profits realized from the sale proceeds. KPC's claim is submitted as a category "E" (corporate) claim as it claims in the capacity of a public sector enterprise and not as a government, as discussed in para. 99, supra.

310. KPC claims that from 2 August 1990, Iraq took control of its oil facilities and denied the Kuwaitis access to them. KPC alleges that its stock of crude oil at KOC premises and its stock of crude oil and refined products at KNPC premises declined and were lost during the occupation. KPC also claims that one part of a cargo of sulphur that KPC had sold to Moroccan buyers was seized by the Iraqi military during the invasion. KPC further claims that its head office, staff accommodation and related facilities in Kuwait City were damaged and looted by the Iraqi forces during the occupation.

311. KPC requests compensation in the amount of US$124,396,824 for the stock losses of petroleum and petroleum products, the loss of the sulphur cargo and the damages to its offices and related facilities.

2. Claim presented

312. KPC's claim is presented in four elements as shown in the following table. Amounts shown have been converted to United States dollars. Details of the claim elements are presented in the sections that follow:

Table 25. Kuwait Petroleum Corporation claim amounts

	Claim elements	Claim amount (US$)
1.	Stock at KOC premises	71,200,000
2.	Stock at KNPC premises	51,924,000
3.	Sulphur contract	584,824
4.	Fixed assets	688,000
	Total	124,396,824

(a) Evidence presented in support

313. KPC's evidence of its loss is contained in contemporaneous documents such as oil accounts, printouts of stock measurements, financial statements, contracts and correspondence. In support of its assertions that Iraqi forces were responsible for this loss, KPC submitted numerous affidavits. Further support is offered by KPC's consultant's reports which contain evidence describing KPC's facilities and assessments and quantification of losses incurred by KPC.

(b) Iraq's response

314. Iraq alleges that there is a lack of substantial and direct evidence of Iraq's responsibility and of the loss claimed by KPC.

315. Iraq also alleges that KPC did not incur stock losses because during the relevant period, Iraq and Kuwait jointly operated Kuwait's oil installations in the manner of a technical cooperation. Iraq asserts that since there was a continuity of operations, KPC stock values were constantly changing.

316. Based on the evidence, the Panel finds that KPC's loss was incurred as alleged by KPC and that this loss is the direct result of Iraq's unlawful invasion and occupation of Kuwait.

317. The Panel finds that the evidence indicates that Iraqi forces dispossessed Kuwait, KPC and KPC's subsidiaries of the oil fields and facilities and that Iraq and Kuwait did not "jointly operate" Kuwait's oil fields' facilities. The Panel has previously addressed the issue of Iraq's liability (see para. 18-22, 113, supra.). The Panel finds, therefore, that any fluctuations in stock levels after Iraq took possession of KPC's

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facilities are Iraq's responsibility and that Iraq should be liable to compensate KPC to the extent that KPC could demonstrate that there was a decline in its stock levels during the relevant period.

B. Analysis of the claim

1. The stock at KOC premises

318. KPC requests compensation in the amount of US$71,200,000 for the loss of its petroleum stock at KOC premises.

319. In an affidavit in support of this claim element, KPC provides a description of how the stock of crude oil at KOC premises is measured and recorded. Each time there is a movement of crude oil out of a tank to a refinery or the export terminal, measurements are taken by reading a calibrated meter on the side of the tank to determine the volume of crude. This measurement is checked from the control room at the tank farm. If crude is to be exported, the stock is further measured by "dipping" i.e. by physically inserting a hand gauge into a tank through a dip hatch to measure the volume of crude oil. The figures obtained then will be incorporated in KOC's crude oil accounting schedules prepared by the Oil and Gas Accounting Division and published monthly. These records include stock volumes in tanks and pipelines.

320. KPC provides KOC's crude oil accounting records as evidence of the volume of crude oil in KOC's premises. These records are maintained by KOC of quantities held at tank farms and pipelines until the point at which ownership passes to KPC, either at the refinery or the export terminal.

321. KPC relies on its consultant's assessment of its stock value based on oil prices at the time the loss occurred. Relevant documentation on oil prices are submitted as evidence.

322. KPC's claim for stock lost from KOC's premises includes a claim for US$67,620,000 for oil lost from the tanks at KOC and US$3,580,000 for oil lost from the KOC pipelines. As support for this claim, KPC submitted a report prepared by its accountants. This report summarizes the information given to the accountants by KPC and uses this information to estimate that KPC lost 4,942,000 barrels of crude oil from tanks at KOC's North and South Tank Farms and from the tanks located at Wafra. KPC's accountants use the same methods to estimate that KPC lost 271,000 barrels of oil from pipelines.

323. KPC values the lost crude oil using estimated prices calculated by its consultants. These prices are based on KPC's historical sales proceeds in the six months prior to 30 June 1990 and range from US$10.00 to US$13.78 per barrel, depending on the grade of the oil. The Panel finds that the

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prices employed to value the oil lost from the tanks and pipelines were reasonable and supported by historical evidence of KPC's sales.

324. Verification of the claim for loss of stock was initially complicated by the claimant's failure to submit primary evidence of the stock losses. As noted, KPC relies primarily on the report prepared by its accountants. During the investigation of the claim, however, KPC's accountants revealed that they had not independently verified some of the figures and had instead relied on data supplied in summary form by KPC. As a result, the Panel instructed the secretariat and its consultants to undertake an independent verification of the claim for stock using primary evidence such as contemporaneous stock measurement records. Based on this investigation, the Panel's consultants concluded that the claim for stock lost from KOC's premises was incorrectly stated in some areas.

325. First, KPC's accountants based the amount of the claim for stock in tanks on the difference between stock in the tanks on 31 July 1990 and on 31 May 1991, the first day after liberation when measurement was possible. In fact, actual records of stock measurements were available from 5.30 a.m. on 2 August 1990, immediately prior to the invasion. These records disclose that there were additional movements of oil through the tanks in question after the 31 July measurement. The net effect of these movements was that the amount of oil in the tanks on 2 August was 162,000 barrels less than the volume present on 31 July. The Panel finds that the claim should be reduced by the amount claimed for these 162,000 barrels, or US$2,232,360.

326. Second, as with tanks, pipelines need a minimum quantity of oil present at all times to permit movement through the lines. The claim for this oil in the pipelines, sometimes termed "pipefill", is similarly unsupported by primary evidence. KPC's accountants base their valuation opinion on information provided to them by KPC in summary form. KPC's accountants make reference to an "assessment" of pipefill; however, no such assessment appears in the accountant's working papers or in KPC's or KOC's records. Moreover, during the verification programme, KPC was unable to supply any records to substantiate the loss of pipefill. The Panel directed its consultants to attempt to verify the loss by measuring the damage to the pipelines, from which the loss of oil from the damaged pipes could be calculated. Again, KPC could not produce any evidence to demonstrate that the pipelines had been damaged sufficiently to cause a loss of pipefill. Because the evidence presented to support this claim is not sufficient to demonstrate the claimed loss, the Panel finds that the loss of stock claim should be reduced by the amount of US$3,580,000 claimed for the pipefill.

327. Based on the foregoing findings, the Panel calculates that the claim for loss of stock at KOC's premises should be reduced by US$5,812,360.

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328. The Panel finds, therefore, that KOC's claim for the loss of stock at KOC's premises is justified in the amount of US$65,387,640 and recommends compensation in this amount.

2. The stock at KNPC premises

329. KPC requests compensation in the amount of US$51,924,000 for the loss of its petroleum and petroleum product stock at KNPC premises. KPC alleges that 1300 metric tonnes of crude oil and 222,600 metric tonnes of refined products belonging to KPC, stored at KNPC premises, were lost during the occupation.

330. KPC produces affidavits explaining the procedures for taking measurements of the stock of crude oil at each of the KNPC refineries:

(a) Mina Al-Ahmadi refinery: A computerized daily stock report is prepared from readings taken at 7.00 a.m. each day by means of a display available in the computer room showing the gauges on the tank side meters for each tank. The refinery issues an Oil Account Report each month, reflecting information from various sources, including hand dipping of static tanks and movement log sheets. The last daily stock printout available prior to the invasion shows stock levels at 7.00 a.m on 2 August 1990. After the liberation of Kuwait, a physical stock take was carried out and a stock printout dated 26 February 1991 was compiled.

(b) Mina Abdulla refinery: The meter measurements of all crude and product tanks are taken at 6.00 a.m. each day and tanks were also measured before and after movements. A daily computer printout is compiled from the measurements. The last printout before the invasion was prepared on 1 August 1990, incorporating details of tank stocks as at 6.00 a.m. that day. This printout is updated and brought forward to 6.00 a.m. on 2 August 1990 by reference to information available to KNPC about production levels and known movements at the refinery on 2 August 1990. After the liberation of Kuwait, a physical stocktake was carried out and a printout dated 1 April 1991 was compiled.

(c) Shuaiba refinery: Prior to the invasion, daily readings for each crude and product storage tank were taken at 5.00 a.m., using tankside gauge information from the control room. The information was then produced in the form of a daily tank inventory. Hand gauge readings of the tanks were taken at monthly intervals for reconciliation and when products were being delivered to a vessel or to another refinery. The last tank inventory available before the invasion was dated 1 August 1990 and recorded measurements taken at 5.00 a.m. on 31 July and 1 August 1990. After the liberation of Kuwait, a physical stock take was carried out and a printout dated 28 February 1991 was compiled.

331. KPC produces copies of stock printouts as evidence of lost stock. KPC alleges that KNPC's stock printouts show the decline in the volume of crude oil and products due to the invasion. The volume of crude oil at the KNPC refineries declined from 133,200 metric tonnes to 131,900 metric tonnes. The volume of the refined products at the KNPC refineries declined from 2,828,600 metric tonnes to 2,606,000 metric tonnes.

332. KPC relies on its consultant's assessment of its stock value based on oil prices at the time the loss occurred. Relevant documentation on oil prices are submitted as evidence.

333. KPC's claim for stock lost at KNPC's premises includes claims for the value of crude oil and products allegedly lost from stores located at the Mina Al-Ahmadi refinery (US$28,518,000) and the Shuaiba refinery (US$25,915,000). KPC also notes that additional refined oil products were collected at the Mina Abdulla refinery after the 2 August 1990 but before the cessation of operations. KPC reduces the claim by the value of these additions to the stocks at Mina Abdulla (US$2,509,000).

334. As support for this claim, KPC submitted a report prepared by its accountants. In addition, KPC has given the Commission access to detailed contemporaneous stock records from each of the refineries. Based on their review of these records, the Panel concludes that KPC accurately recorded the stock levels at the refineries and that the amounts claimed are supported by this evidence. The Panel finds therefore that KPC has accurately stated the amount of stock lost from the KNPC refineries.

335. As discussed in para. 322, supra, the price estimates relied on by KPC are reasonable and supported by evidence of KPC's historical sales prices.

336. The Panel recommends compensation for KOC's claim for the loss of stock at KNPC premises in the amount of US$51,924,000.

337. In summary, the Panel concludes that KPC's claim for stock losses of petroleum and petroleum products at the premises of KOC and KNPC should be reduced from US$123,124,000 to the amount of US$117,311,640.

338. Iraq alleges, however, that the insurance premium refund received by KPC for the oil stock raises doubt on the claim and was not considered in reducing the amount of the claim.[illegible] Based on the evidence, the Panel finds that the refund of insurance premiums received by KPC was for the insurance coverage of its capital and non-capital assets for the period from 2 August 1990 to 30 November 1990 amounting to KD1,049,279.993 or US$3,630,727.[13] The Panel considers it appropriate that this amount should be deducted from KPC's claim as cost savings that KPC have made both on its capital and non-capital assets. The Panel finds, therefore, that KPC's claim should be

reduced by this amount to a total of US$113,680,913, and recommends this amount as compensation for the claims for oil stocks held at the KOC and KNPC premises.

3. The sulphur contract

339. KPC requests compensation in the amount of US$584,824 for a cargo of sulphur lost during the occupation. KPC alleges that a vessel, the Sea Music II, was at the docks of the Shuaiba refinery on 2 August 1990 and was partly loaded with a cargo of sulphur. The sulphur had been sold to a Moroccan company and was being loaded for delivery. Following the liberation of Kuwait, KPC discovered that the vessel and the cargo of sulphur had been removed during the occupation. KPC alleges that the sulphur cargo loaded on the ship was seized by the Iraqi forces. The Moroccan company, Maroc-Phospore had established a letter of credit for the full value of the sulphur shipment described above. The letter of credit is payable upon the presentation of KPC's commercial invoice and a full set of original shipping documents. KPC alleges that because no shipping documents were prepared, these documents were not presented. As a result, no payments were made. On 31 December 1991, KPC issued an invoice in the sum of US$584,824 to Maroc-Phosphore relating to 7,132 metric tonnes of sulphur that had been loaded on the Sea Music II and priced at US$82 per metric tonne. This was returned by Maroc-Phosphore to KPC unpaid on 31 January 1992 invoking a force majeure defense to the purchase agreement. KPC requests compensation for the loss of the partially loaded cargo of sulphur in the quantity and value stated in the above.

340. KPC provides the relevant contracts and related documentation to this claim element as evidence. KPC provides an affidavit as evidence of its claim that the vessel was seized by the Iraqi military following the invasion on an unspecified date and was subsequently removed with the cargo to Umm Al Qasr in Iraq, where the cargo was discharged. Shipping documents were not issued for the partially loaded sulphur cargo. SGS, the joint loadport inspectors in Kuwait, did not issue a certificate of quantity because the loading was incomplete. KPC alleges that the records relating to this cargo were lost during the Iraqi occupation. Only movement records retained by the Mina Al-Ahmadi Refinery are available and these records show that the 7,132 metric tonne of sulphur had been loaded as of the invasion. KPC argues that the contract price is the appropriate value to place on the lost sulphur. KPC asserts that it had contracted to sell 7,132 metric tonnes of sulphur for US$82.00 per tonne, a total of US$584,824.

341. Iraq alleges that there is no substantial evidence, including affidavits by KOC personnel or the crew of Sea Music II, that proves the actual seizure of the sulphur cargo by Iraqi forces. Iraq also argues that KPC's estimate of the quantity of the cargo has no basis and that the

relevant port loading capacity and loading hours do not substantiate the quantity of cargo claimed by KPC. Finally, Iraq asserts that KPC has no right to claim for the sulphur cargo as the cargo is owned by the purchaser.

342. The Panel finds that there is sufficient evidence which established that the Sea Music II and her partial cargo were confiscated by Iraqi forces during their occupation of Kuwait. The Panel also finds that the evidence demonstrates that there was in fact a contract between KPC and the Moroccan purchaser and that there is sufficient evidence to prove that 7,132 metric tonnes of sulphur had been loaded aboard the Sea Music II prior to the ship's confiscation and that the agreed price for that sulphur was US$82 per metric tonne. The evidence further established that KPC had attempted unsuccessfully to obtain payment from the purchaser, Maroc-Phosphore, as KPC could not present complete shipping documents due to the act of confiscation of a part of the cargo by Iraqi forces.

343. Based on the evidence, the Panel finds that KPC has adequately demonstrated that this loss occurred and that it resulted from Iraq's unlawful invasion and occupation of Kuwait. Further, the Panel agrees that the contract price is the correct method of valuing the loss of a commodity such as sulphur when a quantity of the commodity has been collected, identified to a specific contract and sold for a certain sum.

344. The Panel finds, therefore, that KOC's claim for the sulphur contract in the amount of US$584,824 is justified and recommends compensation in this amount.

4. Fixed assets

345. KPC requests compensation in the amount of US$688,000 for losses to its fixed assets in Kuwait. On 2 August 1990, KPC's offices occupied four floors in the Al-Saliyah complex in Kuwait City. These offices were equipped and furnished and accommodated 600 people. KPC also owned about 64 furnished flats in Kuwait City to house its employees. KPC alleges that the Iraqi forces damaged and looted KPC's assets.

346. KPC provides evidence of looting and damage in an affidavit. According to the affidavit, on 6 March 1991 KPC's offices were without electricity, papers were scattered on the floors and the offices were damaged and looted. The office carpets were almost entirely ruined, some water coolers were pulled from the wall and there had been flooding and water leakage. Office facilities such as computers, photocopying machines, printers, projectors and typewriters were stolen. Cars had also been stolen from the KPC car pool, which had been parked in the garage in the KPC office building. The staff accommodations were also looted and

damaged. Only 27 out of 64 of the staff flats were found to be still suitable for accommodation.

347. KPC itemizes this claim element as follows:

Table 26. Kuwait Petroleum Corporation claim amounts

Claim item	Claim amount (KD)	Claim amount (US$)
Office furniture	76,000	261,440
Computers	42,000	144,480
Office equipment	37,000	127,280
Telephones	18,000	61,920
Residence furniture and equipment	27,000	92,880
Total	200,000	688,000

348. To identify the assets destroyed, KPC relies on the remnants of the fixed assets found in its offices after the liberation as well as photographic and testimonial records of what assets existed prior to the invasion. KPC uses this method because the asset registers and other administrative records of KPC's office assets were damaged or destroyed during the looting described above. KPC estimated the proportion of the assets present at 2 August 1990 that were destroyed during the occupation. KPC relies on the report of their accountants for the quantification of this alleged loss. KPC's accountants used accounting records to determine the net book value for each of these assets. The total of the net book values is the claim amount of US$688,000.

349. Iraq alleges that KPC provided no direct evidence of Iraq's responsibility for the loss and damage to KPC's fixed assets. Iraq also alleges that KPC provided no documentary evidence to substantiate the existence of those assets. Iraq further alleges that the claim figure is exaggerated, pointing out that KPC replaced the lost or damaged assets for less than the original cost of those assets.

350. Based on the evidence, the Panel finds that KPC has adequately demonstrated that the fixed assets identified in this claim element were actually lost due to the invasion and occupation. The Panel is satisfied that KPC's method in the circumstances is an acceptable means of identifying a loss such as this when the primary records have been destroyed by Iraq. The Panel's view is further supported by the opinion of the Panel's consultants that the number of assets lost by KPC at its office

was actually much greater than the amount claimed. The Panel also concludes that it is conceivable that the replacement cost of these assets might be lower than their original cost due to the declining market prices of the assets claimed for such as computers. The Panel further finds that net book value is an appropriate value to place on destroyed assets such as those at issue in this claim element.

351. The Panel finds, therefore, that KOC's claim for its fixed assets in the amount of US$688,000 is justified and recommends compensation in this amount.

5. Summary of recommendation

352. The Panel recommends compensation for KPC in the total amount of US$114,953,737 as itemized in the following table:

Table 27. Kuwait Petroleum Corporation recommended compensation

Claim item (Panel adjustment)	Claim amount (US$)	Panel's adjustments to claimant amounts (US$)	Panel's recommended compensation (US$)
Stock at KOC premises	71,200,000	(5,812,360)	65,387,640
Stock at KNPC premises	51,924,000	0	51,924,000
(Insurance premiums returned)		(3,630,727)	(3,630,727)
Sulphur contract	584,824	0	584,824
Fixed assets	688,000	0	688,000
Total	124,396,824	(9,443,087)	114,953,737

VII. CLAIM OF SAUDI ARABIAN TEXACO (CLAIM NO: 4000604)

A. SAT's role in the Saudi Arabian oil industry

353. Saudi Arabian Texaco Inc. ("SAT") is a wholly-owned subsidiary of Texaco Inc. ("Texaco"). Both are corporations created under the laws of the State of Delaware, United States of America.

354. The Kingdom of Saudi Arabia ("Saudi Arabia") and Pacific Western Oil Corporation ("Pacific Western") signed a 60-year Concession Agreement ("Concession Agreement") relating to Saudi Arabia's mineral rights in the PNZ on 20 February 1949. The historical background and the definition of the PNZ is provided in para. 57, supra. As a result of a name change, Getty Oil Company ("Getty Oil") became Pacific Western's successor-in-interest. In 1984, Texaco purchased Getty Oil and, in 1992, changed the name of its operations in the PNZ to Saudi Arabian Texaco Inc. Thus, SAT is the successor-in-interest to Getty Oil, the original holder of Saudi Arabia's concession in the PNZ, and holds the rights and obligations of Getty Oil under the Concession Agreement.

355. SAT asserts that prior to 2 August 1990, it operated as an integrated oil company in the areas of Wafra and Mina Saud in the PNZ. SAT was engaged in the exploration, production, refining and distribution of Saudi Arabia's 50 per cent share of the onshore hydrocarbon reserves in the PNZ. The remaining 50 per cent interest in the hydrocarbon reserves of the PNZ is held onshore by Kuwait Oil Company ("KOC"), and offshore by the Arabian Oil.

356. SAT and KOC have a sharing arrangement known as the "Joint Operation" agreement ("JO") for conducting onshore operations in the PNZ. In general, SAT and KOC divide equally the cost of acquiring and maintaining assets used in the PNZ.

357. SAT claims that it was producing crude oil at an average of 67,400 barrels per day ("BPD") for the 28 months prior to 2 August 1990. This was SAT's 50 per cent share of the oil produced by the JO from three oil fields in the PNZ: Wafra, South Umm Gudair and South Fuwaris. These oil fields had 353 wells producing three types of crude: Eocene, Ratawi and Burgan. The bulk of SAT's production came from the Ratawi and Burgan wells. SAT claims it refined most of its crude production in 1990, processing between 55,000 and 65,000 barrels per day at its own refinery in the PNZ, which was located at Mina Saud. SAT employed 910 workers, of whom about 850 were permanent employees.

B. Facts and contentions

1. Nature of the claim

358. SAT claims that between 3 and 8 August 1990, elements of the Iraqi Republican Guard and other Iraqi military units forcibly evicted SAT personnel from the PNZ, occupied some SAT facilities, and forced SAT to evacuate all its personnel. SAT claims that Iraqi forces systematically destroyed SAT's assets: SAT's oil wells were destroyed with explosives and set on fire and most of SAT's oil lifting, processing, storage and transport facilities, including its refinery and shipping terminal, were damaged or destroyed. SAT also claims that it suffered increased costs and loss of profits as a result of interrupted business and delayed projects caused by Iraq's unlawful invasion and occupation of Kuwait.

2. Claim presented

359. In 1992, SAT filed a claim with the Commission requesting compensation in the amount of US$880,258,670 (the "original claim"). The original claim included three elements: losses to physical assets, extraordinary expenses and losses to income producing properties, or loss of profits.

360. In 1997, SAT filed an amended claim that increased the amount of its claim to US$1,519,952,314 (the "amended claim"). The amended claim also contained three elements: losses to physical assets, extraordinary expenses and a "business interruption" claim.

361. The original and amended claims are itemized in the following table:

Table 28. Comparison of SAT's original and amended claims [13]

Claim element (original claim)	Claim amount (US$)	Claim element (amended claim)	Claim amount (US$)
Physical assets	200,564,400	Physical assets	72,171,021
Business losses (Loss of profits)	616,490,470	Business losses (business interruption)	1,380,135,392
Extraordinary expenses	63,203,800	Extraordinary expenses	67,645,901
Interest and claim preparation costs	unstated	Interest and claim preparation costs	unstated
Total	880,258,670	Total	1,519,952,314

362. The principal differences between the original and amended claims are the result of SAT's decision to abandon the loss of profits approach to business loss valuation in favor of a business interruption approach. The loss of profits claim element of the original claim was, in simplest terms, the profit SAT expected to earn on the oil it would have produced but for Iraq's unlawful invasion and occupation of Kuwait. The lost profit approach initially adopted by SAT was to calculate the lost profit by estimating the number of barrels of oil it would have produced during the occupation and reconstruction period and multiplying that figure by the margin it expected to earn on each barrel. SAT alleges that the estimated margin per barrel was based on the historical figures for sales revenues and costs of production, processing and transportation.

363. The business interruption claim element in the amended claim is a claim for the permanent reduction in the value of the business, rather than simply for the loss of profits. The business interruption approach utilized the discounted cash flow ("DCF") method for calculating SAT's business loss. The DCF method ordinarily involves projecting of net cash flows over the economic life of the asset at issue and discounting these cash flows to their present value. SAT however, has applied the DCF method in a somewhat different manner. SAT first estimates the net cash flow its business would have generated through the end of the concession had Iraq's unlawful invasion and occupation not occurred. SAT then compares that theoretical cash flow with the lower net cash flow it actually received and expects to receive through the end of its concession. The business interruption claim amount is calculated as the difference between the two cash flows, discounted to the date of the claim.

364. There is a significant difference between the amounts claimed by SAT in the original claim for loss of profits and in the amended claim for business interruption. In part, this difference is the result of the change in SAT's valuation methods. In its DCF calculations, the costs of repairing and restoring certain assets used to generate income are treated as expenses and accounted for in the cash flow calculation rather than as extraordinary expenses and costs of physical asset losses. SAT's refinery losses are also transferred into its business interruption claim element from its physical assets claim element. Thus, in the amended claim, the use of the DCF method causes a shift in the claim amounts: the physical assets claim amount is reduced while the business loss claim amount is increased.

365. The majority of the increase, however, is the result of SAT's decision to add to its claim for business losses. In the amended claim, SAT alleges that had the invasion and occupation not occurred, it would have implemented an extensive programme of investments and development in the PNZ, which would have greatly increased SAT's cash flow. SAT asserts

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that Iraq's unlawful invasion and occupation of Kuwait significantly delayed that programme. This allegation is discussed, infra, at para. 432.

366. As the Panel finds that both SAT's original claim and amended claim have relevant evidence that can and should be considered, the Panel will review the structure of SAT's claim as presented in the amended claim, but the Panel will base its review and findings on the entire body of evidence submitted by SAT, regardless of whether SAT submitted it with the original or amended claim.

(a) Evidence presented in support

367. SAT's primary evidence of the destruction of its physical assets is contained in its contemporaneous internal documents such as a log of events, memoranda, PNZ status reports on damage and repairs to its facilities, photographic records and video tapes. In support of its assertions that Iraqi forces were responsible for this destruction, SAT submitted numerous affidavits and documents that allegedly contained plans of sabotage by the Iraqi forces. Further support is provided in SAT's consultant's reports on the description of its facilities and the assessment of damage. SAT's consultant's reports are based on field surveys from 1994-97 and various documents such as SAT's general ledger, invoice detail report, technical data, KOC's damage assessment reports, the Edeleanu GmbH refinery report, an inventory of assets prepared by SAT for an insurance claim in August 1992 and replacement estimates by SAT's consultants. SAT also produced an affidavit with calculations of various expenses such as rental for temporary offices and employee residences and estimates for the replacement and repair costs for its assets.

(b) Iraq's response

368. Iraq generally disputes the compensability and certain valuation aspects of SAT's claims for reasons summarized in the following paragraphs.

(a) The evaluation of losses is unreliable, insufficient and improper. For example, no downward adjustments were made to the full replacement cost of lost assets like storage tanks in Wafra and Mina Saud.

(b) The claim is for indirect losses because the damages were the result of Allied bombings during and after the Iraqi WBC troop withdrawal.

(c) There are discrepancies in information in SAT's claim such as the differences in SAT's annual production figures given in the claim and interrogatories that resulted in an increase of SAT's claim.

(d) SAT did not sufficiently mitigate its loss by accelerating their recovery plans and utilizing promptly their assets and resources and reducing the number of active employees.

(e) SAT substantially altered its systems related to gathering and pumping of crude oil to loading facilities, hindering the objective of reconstructing the facilities to their previous state.

(f) SAT's claim for US$72,171,021 for reconstruction works is unreasonable and disproportionate to the volume of work required and that the total net book value of SAT's assets is US$26,973,646.

369. In addition to the general responses in the above, Iraq contests individual claim elements on specific grounds, which will be mentioned throughout in the analysis of the claim.

370. The Panel has reviewed Iraq's general and specific replies to SAT's claim, some of which are more fully addressed in the context of the discussion below. Nevertheless, the Panel takes this opportunity to summarize its findings on the general objections to this claim expressed by Iraq.

3. The Panel's general findings

371. The Panel's general findings regarding the claims in this instalment are recorded in para. 94-99, supra, and are adopted for the purposes of the report on this claim.

372. To the extent that the evidence presented by SAT may be contradicted by contemporaneous corporate records, or does not reflect accepted business practices in the oil and gas industry, the Panel examined the evidence presented with heightened scrutiny in order to determine whether the claimant satisfied its evidentiary obligations under Article 35(3).

373. The Panel also notes that SAT had every incentive to restore production as quickly and effectively as possible. Based on the evidence, the Panel finds that SAT has properly attempted to mitigate its losses by commencing its reconstruction efforts as soon as possible in the circumstances, utilizing available assets and resources, as well as reducing costs when and where appropriate. As will be seen in the analysis of each of the individual claim elements, SAT has made deductions for betterment that it gained in respect of the alteration of its systems. The Panel finds that SAT's approach in its reconstruction efforts are justified.

374. The Panel further finds that consistent with para. 21 (a) of Governing Council decision 7, Iraq's liability includes any direct loss,

damage or injury suffered as a result of "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991." (Emphasis added.) Consequently, the Panel finds that, consistent with the Panel's decision in the WBC Claim, supra, para. 82, Iraq is liable for any direct loss, damage or injury whether caused by its own or by the coalition armed forces.

C. Analysis of the claim

1. Physical assets

375. In the amended claim, SAT requests compensation in the amount of US$72,171,021 for losses to its physical assets at Mina Saud and Wafra. SAT jointly owned with KOC certain assets at Wafra's main gathering centre and the oil fields of Wafra, South Umm Gudair and South Fuwaris. SAT severally owned all assets at Mina Saud, including a refinery. SAT alleges that during the invasion and occupation, the Iraqi forces systematically destroyed these facilities. SAT alleges that its refinery at Mina Saud had been destroyed, its shipping terminal had been severely damaged, 90 per cent of the administrative support, residential and medical facilities had been severely damaged and seven storage tanks had been destroyed. SAT also alleges that in Wafra, 90 per cent of the oil lifting, processing, storage and transportation facilities had been destroyed. Further, 90 per cent of the administrative support, residential and medical facilities had been destroyed or severely damaged. SAT further alleges that in the Wafra oil fields, approximately 300 active wells in Wafra had been damaged by explosives and oil was flowing unchecked onto the surface from 30 wells. Six of the fields were on fire. At the gathering centres, 19 gathering subcentres had been heavily damaged, and eight storage tanks had been destroyed at the Wafra main gathering centre.

376. Based on the evidence, the Panel finds that SAT's physical assets have been damaged as alleged by SAT and that this damage is the direct result of Iraq's unlawful invasion and occupation of Kuwait.

377. SAT bases the amended claim's physical assets claim element amount on three cost components:

(a) the total replacement and repair costs that SAT incurred and paid for the damage to its assets at Mina Saud and Wafra up to and including 21 November 1997,

(b) SAT's estimated cost of replacement and repair of its unreplaced assets, and

(c) SAT's 50 per cent share of the total replacement and repair costs for damage to Joint Operation ("JO") assets at Wafra and in the Wafra oil fields operated by the JO (JO costs).

378. In the amended claim, SAT capitalized a minor portion of its JO costs and expensed the balance of these costs. The capitalized portion of SAT's JO costs forms part of SAT's physical asset claim while the expensed portion of the JO costs forms part of SAT's business interruption claim. From these costs, SAT subtracts certain amounts to adjust for refinery losses, which SAT had transferred to its business interruption claim element, and expenses related to restoration of physical assets, which SAT had transferred to its extraordinary expenses claim element. SAT also subtracts certain amounts for depreciation, betterment and other benefits it received from reinstatement of its facilities where it deems appropriate.

(a) Mina Saud

379. In the amended claim, SAT requests compensation in the amount of US$47,490,480 for the losses to its Mina Saud physical facilities. As a result of a calculation error, the Panel finds that SAT has stated this amount as US$47,490,478.

380. SAT's calculations are shown in the following table:

Table 29. SAT's claim for physical assets at Mina Saud

Claim element		Claim amount (US$)
Physical Facilities		
-Tank farm		16,203,736
-Workshops		499,675
-Marine terminal		285,340
-Residential facilities		1,616,489
-Administration & general facilities		1,365,347
-Transfer pipelines		90,154
	Subtotal	20,060,741
Stocks		
-Crude oil and products in tanks		25,688,388
-Crude oil and products in pipelines		1,054,638
-Warehouse inventory		686,713
	Subtotal	27,429,739
Total		47,490,480

381. Based on the evidence, the Panel finds that SAT's replacement costs and estimates of replacement costs are justified. However, SAT uses residual values of between 10 and 20 per cent for its Mina Saud assets. The Panel finds that lower residual values of between one and 10 per cent should be employed in valuing the assets lost, in accordance with the industry norms for the items at issue due to the remote location and harsh climatic conditions in which the assets were used. The adjustments for each item comprising this claim element are reflected in the following paragraphs.

382. SAT first requests compensation in the amount of US$16,203,736 for unreplaced and replaced tankage that were destroyed during Iraq's unlawful invasion and occupation of Kuwait. Based on the evidence, the Panel finds that the replacement costs for the tankage are justified. However, as discussed in para. 121, supra, the Panel finds that the residual values were overstated and recommends a five per cent residual value for the tankage. As a result of these adjustments, the Panel finds that SAT's claim for tankage should be reduced to US$2,247,218.

383. SAT requests compensation in the amount of US$499,675 for workshops, warehouses and associated buildings that were destroyed, damaged and/or vandalized. Based on the evidence, the Panel finds that the replacement costs for these assets are justified. However, as discussed in para. 122, supra, the Panel finds that the residual values were overstated and recommends a residual value of five per cent for plant and machinery and one per cent for structures and buildings. As a result of these adjustments, the Panel finds that SAT's claim for these assets should be reduced to US$146,798.

384. SAT requests compensation in the amount of US$285,340 for the damaged assets at its marine terminal. Based on the evidence, the Panel finds that the replacement costs for these assets are justified. However, as discussed in para. 121, supra, the Panel finds that the residual values are overstated and recommends a residual value of five per cent for these assets. As a result of these adjustments, the Panel finds that SAT's claim for these assets should be reduced to US$229,049.

385. SAT requests compensation of US$1,616,489 for its damaged and vandalized residential facilities. Based on the evidence, the Panel finds that the replacement costs for these assets are justified. However, as discussed in para. 122, supra, the Panel finds that the residual values are overstated and recommends residual values of five per cent for unit furnishings and one percent for prefabricated houses. As a result of these adjustments, the Panel finds that SAT's claim for its residential facilities should be reduced to US$810,935.

386. SAT requests compensation in the amount of US$1,365,347 for its damaged administration and general facilities such as its guest houses, fire appliances, a used fire truck, furniture and office equipment. Based on the evidence, the Panel finds that the replacement costs for these assets are justified. However, the Panel finds that the residual values are overstated and recommends residual values of one per cent for the guest house, five per cent for furniture and office equipment and 10 per cent for fire appliances and the used fire truck. As a result of these adjustments, the Panel finds that SAT's claim for these facilities should be reduced to US$1,102,687.

387. SAT requests compensation in the amount of US$90,154 for its damaged transfer pipelines. Based on the evidence, the Panel finds that the capitalized expenditure on repairing these pipelines are justified and finds that SAT should be compensated this amount.

388. Based on the adjustments identified above, the Panel finds that US$4,626,841 is an appropriate level of compensation for the physical assets lost at Mina Saud.

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389. Some of SAT's physical asset reconstruction costs at Mina Saud were removed from the physical assets claim element in the amended claim. These losses were included in the original claim for physical assets. As noted above, however, in the amended claim much of these costs were addressed in the context of the business interruption claim. For the same reasons, the value of SAT's refinery at Mina Saud does not appear in the amended claim as part of the physical assets claim element.

390. Iraq alleges that SAT made no attempts to repair or salvage the process facilities of the refinery because the old units and systems were inefficient and therefore SAT preferred to claim compensation equivalent to rebuilding a new refinery.

391. Based on the nature of these losses, review of evidence submitted, verification and other evidence, the Panel is of the view that SAT's physical asset reconstruction costs and losses to its refinery at Mina Saud should be included in SAT's physical assets claim element. Accordingly, the Panel directed its consultants to evaluate SAT's incurred expenses for its physical asset reconstruction costs and the depreciated value of the destroyed Mina Saud refinery. Based on the evidence submitted by SAT as part of the original claim for these items, the Panel finds that the physical asset reconstruction costs in the amount of US$16,991,857 were incurred by SAT at Mina Saud and that US$15,177,771 is an appropriate level of compensation for the depreciated value of the Mina Saud refinery.

392. After the adjustments for SAT's incurred physical asset reconstruction expenses and the evaluation of SAT's refinery, the Panel finds that SAT's losses to its physical assets at Mina Saud are US$36,796,469.

393. SAT requests compensation in the amount of US$25,688,388 for the value of stocks of crude oil and products in inventory at its tank farm at Mina Saud. SAT claims that as a result of the damage to its tank farms, its stocks were spilled, lost and/or stolen. These stocks included crude oil, fuel oil, naphtha and asphalt. SAT determines the amount of this claim element by estimating its average profit margin per barrel for each of these products, which it calculates by subtracting the per barrel cost of its crude oil and products from the per barrel selling price. SAT then estimates the number of lost barrels of crude oil and products it could have produced during the occupation and reconstruction periods and multiplies the estimated per barrel profit margin figure by the number of lost barrels.

394. SAT alleges that at the time of the invasion, its tanks and pipelines contained 1,345,019 barrels of crude oil and oil products. This amount consisted of 386,250 barrels of crude oil; 946,500 barrels of refined

products such as fuel oil, diesel fuel and naphtha; and 12,269 barrels of other oil products, such as asphalt.

395. Based on a review of the claim documentation and other evidence submitted, as well as an investigation by the secretariat and the Panel's consultants, the Panel concluded that the volume of stock in these tanks and pipelines on the date of the invasion was actually 1,119,171 barrels. This conclusion is based in part on the lower oil stock volume stated in SAT's own oil movement records. The Panel finds, therefore that the actual volume of crude oil and product inventories at SAT's tank farm in Mina Saud was 1,119,171 barrels.

396. The Panel also concludes that SAT's refinery yields and the prices used to value the crude oil and oil products, with the exception of naphtha prices, are supported by evidence of contemporary market prices for these commodities. The Panel finds that the naphtha prices used by SAT were slightly overstated and, therefore, finds that the claim element for loss of naphtha stock should be valued using published market prices for naphtha at the time of the invasion and occupation of Kuwait.

397. SAT asserts that during its normal operations, its tank farm's pipeline would have been full of crude and refined product, known as pipefill. Based on the evidence submitted and general practices in the industry, the Panel's consultants concluded that this assumption was correct. The Panel's consultants also concluded that where SAT's pipelines were found to be damaged, it was reasonable to conclude that the corresponding volume of pipefill had been lost.

398. With respect to the asphalt, diesel fuel and fuel oil claim items, SAT's consultants assume in their calculations that at the time of the invasion, asphalt and fuel tanks were 50 per cent full, diesel tanks were 90 per cent full and that the remainder of the hydrocarbon tanks were 100 per cent full. These assertions are not adequately supported by the evidence. Based on the historical records of SAT and other information provided by SAT, the Panel estimates that these tanks were no more than 60 per cent full on average. Because there is no evidence presented to indicate that SAT had greater than average volumes at the time of the invasion, the Panel bases its evaluation of the claim element for these products on the average volumes and reduces the claim amount accordingly.

399. After the adjustments discussed in the above, the Panel finds that SAT's crude and product inventory losses should be reduced to US$20,455,693.

400. SAT also requests compensation in the amount of US$686,713 for its main warehouse stock. SAT calculates this amount by comparing the difference between the amounts of its main warehouse stock that were

written off in its December 1990 general ledger and the reinstatement amounts of its main warehouse stock stated in its August 1991 general ledger. SAT then treats the difference in amounts between its general ledgers as the best estimate of the original cost of the warehouse stock stolen or destroyed during the invasion and occupation. SAT further applies a 25 per cent price escalation factor to its estimate.

401. Based on the evidence submitted, the Panel's consultants concluded that SAT's estimate of the original cost of the warehouse stock was reasonable. However, the Panel's consultants concluded that the price escalation factor of 25 per cent was overstated for the warehouse stock at issue. The Panel agrees with its consultants that a price escalation factor of 6 per cent is more reasonable given the time and nature of the materials involved. Further, the Panel's consultants concluded that materials in transit in the amount of US$47,420 and material movement cost in the amount of US$36,272, which form part of the claimed warehouse stock amount, should be excluded from the application of the price escalation factor.

402. After the adjustments discussed above, the Panel finds that SAT's main warehouse stock loss should be reduced to US$579,822.

403. Further, SAT requests compensation of US$1,054,638 for crude and product lost in its pipelines that were used to transfer the crude and product from its Wafra site to its Mina Saud facility. SAT calculates this amount by first subtracting the cost of the crude and product per barrel from the selling price of the crude and product per barrel. SAT then multiplies the figure obtained from this calculation by the number of barrels lost.

404. Based on the evidence submitted, the Panel concluded that as the transfer pipelines in issue were found damaged, it is reasonable to conclude that the contents of these pipelines had been spilt and lost. The Panel directed its consultants to calculate the number of barrels claimed to be lost and the Panel agreed with its consultants' opinion that they were reasonable and matched the pipelines' capacity. The Panel's consultants further were of the opinion that the refinery yields and prices used in SAT's calculations were reasonable with the exception of naphtha prices, which were slightly overstated. The Panel agreed with the opinion of its consultants and accordingly directed that a deduction of US$18,288 should be made to account for SAT's overstated naphtha prices.

405. Based on the adjustments above, the Panel finds that SAT's loss of crude and product should be reduced to US$1,036,350.

406. The Panel finds that the amount of SAT's total stock losses claim at Mina Saud that is supported by the evidence is US$22,071,865.

407. Based on the foregoing findings, the Panel recommends compensation for SAT's claim for its physical assets at Mina Saud in the amount of US$58,868,334 as itemized in the following table:

Table 30. Physical assets at Mina Saud recommended compensation

Claim element	Claim amount (US$)	Panel's adjustments (US$)	Recommended compensation (US$)
Physical Facilities			
-Tank farm	16,203,736	(13,956,518)	2,247,218
-Workshops	499,675	(352,877)	146,798
-Marine terminal	285,340	(56,291)	229,049
-Residential facilities	1,616,489	(805,554)	810,935
-Administration & general facilities	1,365,347	(262,660)	1,102,687
-Transfer pipelines	90,154	0	90,154
Subtotal	20,060,741	(15,433,900)	4,626,841
Stocks			
-Crude oil and products in tanks	25,688,388	(5,232,695)	20,455,693
-Crude oil and products in pipelines	1,054,638	(18,288)	1,036,350
-Warehouse inventory	686,713	(106,891)	579,822
Subtotal	27,429,739	(5,357,874)	22,071,865
Claim elements transferred by Panel from Business Losses Claim			
-Mina Saud refinery		15,177,771	15,177,771
-Direct reconstruction expenses (at Mina Saud)		16,991,857	16,991,857
Subtotal		32,169,628	32,169,628
Total (excluding transferred claim elements)	47,490,480	(20,791,774)	26,698,706
Total (including transferred claim elements)	47,490,480	11,377,854	58,868,334

(b) Wafra

408. SAT requests compensation in the amount of US$24,680,546 for the losses to its physical facilities in the Wafra oil fields. As a result of a calculation error, the Panel finds that SAT has stated this amount as US$24,680,543.

409. SAT's calculations are shown in the following table:

Table 31. SAT's claim for physical assets at Wafra

Claim element		Claim amount (US$)
Physical Facilities		
-Incurred Joint Operations (JO) costs		231,323
-Oil fields and oil wells		5,301,516
-Sub gathering centres		1,140,732
-Main gathering centre		7,279,685
-SAT Wafra camp (SAT and JO assets)		931,445
-KOC Wafra camp (JO assets)		305,241
	Subtotal	15,189,942
Stocks		
-Crude oil inventory at Wafra		3,240,236
-Warehouse inventory at Wafra		6,250,368
	Subtotal	9,490,604
Total		24,680,546

410. Based on the evidence, the Panel finds that SAT's records of actual replacement costs are accurate and its estimates of replacement costs are justified. However, as with its Mina Saud claim element, SAT uses a residual value of between 10 and 20 per cent for its Wafra assets. The Panel finds that lower residual values of between one and 10 per cent should be employed in valuing the assets lost, in accordance with the industry norms for the items at issue due to the remote location and harsh climatic conditions in which the assets were used. The adjustments for each item comprising this claim element are reflected in the following paragraphs.

411. SAT requests compensation in the amount of US$231,323 for incurred JO costs based on half of KOC's claim for JO costs. Based on the evidence,

the Panel finds that these costs should be substituted by SAT's actual incurred costs for its physical reconstruction costs at Wafra as there was a potential element of double counting. As a result, the Panel does not recommend that this claim amount be compensated.

412. SAT requests compensation in the amount of US$5,301,516 for losses to its oil fields and oil wells and related equipment. Based on the evidence, the Panel finds that the amount claimed by SAT for its lost wells, core sample, flowlines and trunk lines is justified. As discussed in para. 121, supra, however, the Panel finds that the 10 per cent residual value used by KOC for the well pumps is overstated and recommends a residual value of five per cent for these assets. The Panel also agreed with its consultants' opinion that deductions of 15 per cent for reduced maintenance costs and 10 per cent to reflect betterment should be made for Eocene pumps. As a result of these adjustments, the Panel finds that SAT's claim for losses to its oil fields and oil wells and related equipment should be reduced to US$4,586,240.

413. SAT requests compensation in the amount of US$1,140,732 for losses to assets at its sub gathering centres. Based on the evidence, the Panel finds that the amount claimed for the estimated reinstatement costs of these assets is justified. As discussed in para. 121, supra, however, the Panel finds that the 10 per cent residual value used by KOC for the assets at the sub gathering centres is overstated and recommends a residual value of five percent for these assets. As a result of these adjustments, the Panel finds that SAT's claim for losses to assets at its sub gathering centres should be reduced to US$608,663.

414. SAT requests compensation in the amount of US$7,279,685 for its destroyed or damaged tankage at its main gathering centre. Based on the evidence, the Panel finds that the amount claimed for the replacement costs of these assets is justified. As discussed in para. 121, supra, however, the Panel finds that the 10 per cent residual value used by KOC for the assets at the main gathering centre is overstated and recommends a residual value of five percent for these assets. As a result of these adjustments, the Panel finds that SAT's claim for losses to its assets at the main gathering centre should be reduced to US$1,979,817.

415. SAT requests compensation in the amount of US$931,445 for its destroyed, damaged or lost assets at the SAT Wafra camp. Based on the evidence, the Panel finds that the amount claimed for the replacement costs of these assets is justified. As discussed in para. 121-122, supra, the Panel finds that the 10 per cent residual value used by KOC for the assets at SAT's Wafra camp is overstated and recommends a residual value of five percent for plant and machinery and one per cent for structures and buildings. As a result of these adjustments, the Panel finds that SAT's

claim for losses to its assets at SAT's Wafra camp should be reduced to US$401,844.

416. SAT requests compensation in the amount of US$305,241 for its destroyed or damaged or lost assets at the KOC's Wafra camp. Based on the evidence, the Panel finds that the amount claimed for the replacement costs of these assets is justified. As discussed in para. 121-122, supra, however, the Panel finds that the residual values used by KOC for the assets at its Wafra camp are overstated and recommends a residual value of five percent for plant and machinery and one per cent for structures and buildings. As a result of these adjustments, the Panel finds that SAT's claim for losses to its assets at KOC's Wafra camp should be reduced to US$218,120.

417. Based on the adjustments above, the Panel finds that US$7,794,684 is an appropriate level of compensation for the physical assets lost at Wafra.

418. The amended claim for physical assets does not contain a separate claim element for the SAT's share of the JO's direct reconstruction costs at Wafra. The Panel directed its consultants to evaluate the loss of the direct reconstruction expenses incurred by SAT at Wafra. Based on the evidence submitted by SAT with the original claim for these items and on other evidence developed during the claims development process, the Panel finds that US$33,827,486 is an appropriate level of compensation for SAT's direct reconstruction costs at Wafra.

419. After the adjustments for SAT's incurred physical reconstruction expenses at Wafra, the Panel finds that SAT's losses to its physical assets at Wafra are US$41,622,170.

420. SAT requests compensation in the amount of US$3,240,236 for lost crude and product inventory at Wafra, consisting of 126,000 barrels of crude in its tanks and 38,927 barrels of crude in its pipelines. SAT calculates this amount by subtracting the cost of the crude per barrel from the selling price of the crude per barrel then multiplying the figure obtained by the number of lost barrels.

421. Based on the evidence submitted, the Panel concludes that the tank capacities at Wafra are overstated. For the reasons detailed in para. 398, supra, the Panel finds that the volume of crude oil in SAT's tanks at Wafra was likely no more than 60 per cent of capacity. The Panel also finds that as SAT's pipelines were found to be damaged, it is reasonable to conclude that the crude contained in the pipelines were spilt and lost. The Panel further finds that the refinery yields and prices used by SAT in its calculations are reasonable with the exception of naphtha prices, which were slightly overstated. The Panel made a deduction to SAT's naphtha prices to compensate for the overstatement.

422. After the adjustments discussed above, the Panel finds that SAT's crude and product inventory losses at Wafra should be reduced to US$2,211,631.

423. SAT also requests compensation in the amount of US$6,250,368 for its main warehouse stock in Wafra. SAT calculates this amount by comparing the difference between the amounts of its main warehouse stock that were written off in its December 1990 general ledger and the reinstatement amounts of its main warehouse stock stated in its August 1991 general ledger. SAT then treated the difference in amounts in its general ledgers as the best estimate of the original cost of the warehouse stock stolen or destroyed during the invasion and occupation. SAT also deducted 50 per cent of the cost related to its refinery stock to account for its refinery claim included in its business interruption claim element. SAT then applied a 25 per cent price escalation factor to its estimate.

424. Based on the evidence submitted, the Panel concludes that SAT's estimate of the original cost of the warehouse stock was reasonable. The Panel also concludes, however, that the price escalation factor of 25 per cent was overstated for the warehouse stock at issue. The Panel finds that a price escalation factor of six per cent is more reasonable. Further, the Panel's consultants recommended that materials in transit in the amount of US$67,238, which form part of the claimed warehouse stock amount should be excluded from the application of the price escalation factor The Panel agrees with this recommendation.

425. After the adjustments discussed above, the Panel finds that SAT's claim for lost main warehouse stock should be reduced to US$5,310,532.

426. The Panel finds that the reasonable amount of SAT's claim for its stock losses at Wafra is US$7,522,163 as itemized in the following table.

427. Based on the foregoing findings, the Panel recommends compensation for SAT's claim in the amount of US$49,144,333 for its physical assets at Wafra as itemized in the following table:

Table 32. Physical assets at Wafra recommended compensation

Claim element	Claim amount (US$)	Panel's adjustments (US$)	Recommended compensation (US$)
Physical Facilities			
-Incurred Joint Operations (JO) costs	231,323	(231,323)	0
-Oil fields and oil wells	5,301,516	(715,276)	4,586,240
-Sub gathering centres	1,140,732	(532,069)	608,663
-Main gathering centre	7,279,685	(5,299,868)	1,979,817
-SAT Wafra camp (SAT and JO assets)	931,445	(529,601)	401,844
-KOC Wafra camp (JO assets)	305,241	(87,121)	218,120
Subtotal	15,189,942	(7,395,258)	7,794,684
Stocks			
-Crude oil inventory at Wafra	3,240,236	(1,028,605)	2,211,631
-Warehouse inventory at Wafra	6,250,368	(939,836)	5,310,532
Subtotal	9,490,604	(1,968,441)	7,522,163
Claim element transferred by Panel from Business Losses Claim			
-Direct reconstruction expenses (at Wafra)		33,827,486	33,827,486
Total (excluding transferred claim elements)	24,680,546	(9,363,699)	15,316,847
Total (including transferred claim elements)	24,680,546	24,463,787	49,144,333

2. Business losses

428. In its original claim, SAT requests compensation for business losses in the amount of US$616,490,470 for loss of profits resulting from interruption of oil production. SAT alleges that oil production was interrupted as a result of the invasion and occupation of Kuwait and the subsequent destruction of its assets at Mina Saud, Wafra and the PNZ oil fields. SAT requests compensation for the loss of profits it alleges that

it would have earned on that oil production but for Iraq's unlawful invasion and occupation of Kuwait.

429. SAT produces an affidavit with calculations of lost profits and certain financial and operations data, including financial statements, in support of this claim element. SAT assumes that it would have continued to produce at pre-invasion levels of 65,000 barrels per day had there been no invasion. SAT then calculates an average net profit per barrel based on its performance for the three and a half year period preceding the invasion. SAT alleges that it would have lost profits from the period of 2 August 1990 through to 31 December 1995, the date on which the production was projected to be restored to pre-invasion levels. SAT then multiplies its estimated average net profit per barrel by the number of barrels that it claims it would have produced during this period. From that figure, SAT subtracts the estimated value of partial production during the loss period to obtain the lost profits claim amount of US$616,490,470.

430. The Panel learned during the investigation of the claim that the accounting records used to support the claimed sales prices and to derive the estimated net profit per barrel were not based on actual sales transactions, but were instead based on a theoretical sales price, known as the tax reference price ("TRP"), that Saudi Arabia required SAT to use to calculate its tax obligations to Saudia Arabia. TRP was, on average, higher than the price SAT actually received for its oil. Thus, use of TRP to calculate profit has the effect of overstating the price received and, therefore, the profit earned. SAT ultimately supplied records from which the Panel could more accurately estimate SAT's actual gross profit per barrel.

431. In the amended claim, SAT adopts a new method of valuing its business loss claim element, resulting in the increase of this claim element to US$1,380,135,[illegible]32. Rather than the method used in the original business loss claim element, SAT asserts that the invasion and occupation of Kuwait "damaged" SAT as a going concern. SAT bases this assertion on its estimation that the volume of oil production lost as a result of the invasion and occupation will be recovered, if at all, only slowly. SAT seeks to quantify this damage by comparing two numbers: (i) the net present value of the "no-invasion" cash flow that SAT estimates it would have received from the "undamaged SAT" from the date of the invasion through the end of its concession if the invasion and occupation had never occurred, and (ii) the net present value of the cash flow that SAT estimates that it will receive from the "damaged SAT" over the same period.

432. Most of the difference between the business loss claim elements in the original and amended claims is the result of SAT's decision to include in its projected "no-invasion" cash flow estimates the effects of a proposed investment programme. SAT asserts that at the time of the

invasion it had prepared, approved, and begun to implement a programme of investments in its operations in the PNZ that would have resulted in significant increases in crude oil production. This programme is detailed in SAT's 1991-1995 Strategic Plan, which was submitted with the amended claim. SAT claims that, at the time of the invasion, SAT was preparing to implement this investment programme and, therefore, that this programme was delayed by the invasion.

433. Iraq asserts that SAT's use of future strategic and management plans such as the investment programme in its claim for loss of earnings is not justified legally or financially for the following reasons:

(a) SAT's 1991-1995 Strategic Plan has no detailed project schedule or evidence of authorization prior to August 1990 and is preliminary and speculative.

(b) The methodology adopted by SAT to calculate its loss to income producing properties is hypothetical because it focuses on forecasts and future projections over long future periods and therefore any changes in any of these assumptions can alter the result drastically.

(c) Iraq also alleges that the statistical method in applying decline curve analysis employed by SAT's consultants was not accurate and has wide margin of errors.

(d) Iraq disputes SAT's assumptions of positive earnings until the end of the Concession. Iraq alleges that the wide fluctuation of profitability over the reported periods also shows that a claim cannot be based on forecasted earnings.

(e) The implementation of the refinery expansion plan as part of SAT's investment programme assumes that the crude oil production matches the new refinery capacity and that there is a constant relationship between prices and costs of marketing for oil products.

(f) SAT's claim for increased operating expenses lacks supporting evidence. Iraq alleges that this claim possibly overlaps with the extraordinary expenses claim.

434. During the verification programme, the secretariat and the Panel's consultants spent considerable time investigating this claim. SAT produced the evidence it considered supported this claim. After reviewing SAT's submissions, however, the Panel concludes that the evidence does not support SAT's claim for lost profits as presented in its amended claim. The basis for this conclusion is discussed in the remaining paragraphs of this section.

435. SAT argues that the discounted cash flow method is specifically mentioned by the Governing Council in decision 9 as one of the methods that may be used to value business losses, and therefore, that it is using a method endorsed by the Governing Council. In article 18 of decision 9, the Governing Council states that where the market value of a property -

> "cannot be ascertained, the economic or current value of that asset can be ascertained by the *discounted cash flow (DCF)* method [...]. The DCF method calculates the value at one specified time of cash flows that are to be received at a different time by discounting the yearly net cash flows to present value."

436. The Panel notes, however, that this method is mentioned only as one of several methods that the Panel may employ in valuing business losses; it is ultimately the Panel's choice as to which method most accurately values a claimant's loss. The Panel does not consider that the approach to valuation used by SAT in its amended claim is appropriate for losses of this nature for several reasons that are discussed below.

437. At the outset, the Panel finds that the Governing Council has placed a limitation on the scope of compensable losses. The Governing Council states, in article 17 of decision 9, that

> "In the event that the business has been rebuilt and resumed, . . ., compensation may only be claimed for the loss suffered during the relevant period."

438. The Governing Council does not explicitly define the term "relevant period," but in the context in which it is used, it appears to the Panel that the Governing Council intended that the relevant period be defined as the period between the date of impairment of the business and the date on which the business was or could have been rebuilt and resumed operations at pre-invasion levels. In so doing, the Governing Council has placed an implicit limit on the scope of consequential losses that are compensable before the Commission, and the Panel must pay due regard to this limitation.

439. Based on this interpretation, the Panel concludes that where an income-producing property, i.e., an asset or a group of assets, such as a business, has been completely destroyed or irreparably damaged, the DCF method can be used to estimate the cash flows through the end of the property's expected economic life in order to value that property. Where the asset or business can be repaired or resumed, however, the DCF method will not be an appropriate measure of loss to the extent that it takes into account estimated losses beyond the restoration date of the asset or business.

440. SAT argues that the combination of the delay in production caused by the invasion and occupation and the fact that the concession is of a limited duration has caused a permanent diminution in the value of SAT as an income-producing property. Because this loss in value cannot be recovered before the end of the concession, SAT concludes that the relevant period of loss is the entire life of the concession and the application of the DCF loss calculation method is appropriate.

441. SAT reaches its conclusion through a complicated series of projections, involving two separate DCF calculations, which purport to demonstrate that the net cash flow lost as a result of the invasion will not be recovered before the end of the concession in 2009. First, SAT calculates the projected cash flow it would have received through 2009 but for the invasion - the "no-invasion" cash flow. Second, SAT calculates and projects the cash flow that it will actually receive through 2009 - the "actual" cash flow. In both cases, the calculations are made on the basis of an assumed price and cost structure during the period. Third, SAT assumes that it would have implemented the alleged investment programme and estimates the amount by which this programme would have increased its revenues. SAT then adjusts its projections of no-invasion cash flow to account for these increases.

442. The principal effect of this adjustment in the projected "no-invasion" cash flow is to increase significantly the amount of the lost cash flow in the period immediately following 2 August 1990. SAT argues that this "lost" cash flow is recovered only after actual cash flow begins to exceed the projected no-invasion cash flow. Because of the size of the "lost" cash flow and the limited remaining life of the concession, SAT calculates that the "lost" cash flow cannot be recovered by the end of the concession. Therefore, in SAT's view, the loss period extends through the end of the concession.

443. Iraq alleges that SAT's alleged inability to recover lost production is irrelevant because Iraq believes that SAT's concession will be extended for the following reasons: Firstly, all concession agreements provide extensions in the form of force majeure articles, secondly, the concession is viable for all parties in the circumstances and thirdly, the reservoir study indicates that the reserves are not sufficiently large to warrant the establishment of new agreements.

444. The Panel is not persuaded by SAT's arguments. First, SAT ignores the fact that its principal asset is its concession from Saudi Arabia. That asset has not been lost nor does SAT allege that it has been destroyed. SAT has restored and resumed its operation of that concession, although it claims it is in a different form than before the invasion. Thus, the Panel finds that, under the limitations placed by decision 9, SAT may only claim for the business losses incurred during the relevant period

- the time between the cessation of operations following the invasion and the resumption of its operations at pre-invasion levels. The DCF calculations employed by SAT, however, project SAT's losses through the end of the concession in 2009, far beyond the relevant period contemplated in decision 9. For these reasons, the Panel finds that SAT's use of this method is not an appropriate method of valuing SAT's loss and SAT's alleged inability to recover lost production is irrelevant.

445. In addition to the fact that the DCF method employed by SAT exceeds the scope of compensable losses, as set forth in decision 9, it also exceeds the Governing Council's limits on the nature of losses that are compensable. The economic reality of SAT's amended claim is that SAT requests compensation for income it estimates it would have been able to earn but for the invasion and occupation. In essence, it seeks to recover lost future profits. For the purposes of this inquiry, the Panel does not find any relevant distinction between loss of future cash flow and loss of future profits - each is concerned with the estimated future economic effects of present actions. The Governing Council stipulates the standard by which loss of future profits can be compensable and the method of valuation that will adhere to this standard. In article 19 of decision 9, the Governing Council states that

> "In principle, the economic value of a business may include loss of future earnings and profits where they can be ascertained with reasonable certainty. [. . .] a number of such businesses can be or could have been rebuilt and resumed. The method of a valuation should therefore be one that focuses on past performance rather than on forecasts and projections into the future. Compensation should be provided if the loss can be ascertained with reasonable certainty based on prior earnings or profits."

446. With respect to SAT's claim, the Panel finds that SAT's valuation in its amended claim of its lost future earnings does not adhere to the standard and method stipulated by the Governing Council. SAT estimates that it would have increased its cash flows but for the invasion and bases its estimated increase predominantly on its alleged investment programme. The investment programme on which so much of SAT's business loss calculations depend is not based on past performance - it is based on the hypothetical effects of a series of plans that had not been implemented at the time of the invasion.

447. SAT argues that its past experiences with oil operations in the PNZ allow it to estimate the revenue producing effects of its proposed investments. Based on the evidence submitted, the Panel finds, however, that SAT can only use past data to project its costs. SAT admits that the amount of oil that will flow from a new well is a projection of future events. Estimation of the production from an undrilled oil well is the

essence of a forecast or projection into the future. The Panel finds, therefore, that SAT's estimations for its future cash flows as projected effects of the investment programme cannot be ascertained with reasonable certainty and are not based on SAT's past performance as required by the Governing Council. As a result, the Panel finds that the effects of the investment programme may not be considered when evaluating SAT's losses.

448. It is nonetheless certain, however, that SAT experienced a real loss from its inability to produce and sell oil during the invasion and restoration period. The Panel finds that the losses resulting from this inability to produce and sell oil can be measured by reference to past performance. SAT's original claim is based on these parameters of loss and referred to SAT's past performance to calculate SAT's business losses. The Panel finds, therefore, that the method in SAT's original claim is more appropriate to value the nature of SAT's business loss during the invasion and restoration period. The Panel notes, however, that it has transferred certain elements of the amended business losses claim to the claim for physical assets. (See discussion at para. 389-391, supra.)

449. With respect to SAT's original claim, the Panel finds that SAT has underestimated the production rate in the PNZ. SAT claims a total of 65,000 barrels per day, which it calculates as 50 per cent of the total estimated production of 130,000 BPD. In fact, based on evidence obtained following the filing of the claim, the Panel determined that the PNZ production rate was 133,436 BPD, which gives SAT a share of 66,718 BPD

450. The Panel also finds, however, that production was restored in April 1995, rather than in December 1995 as estimated in the claim. Thus, the claim overstates the period of loss.

451. Based on the actual production rate and loss period, the Panel calculates that SAT lost a total of 63,483,315 barrels of production instead of the 68,651,500 estimated in the claim.

452. SAT values its production at the estimated margin per barrel of US$8.98, a figure that it calculates using accounting records submitted with the claim. As noted above, however, this estimated profit margin was calculated using a theoretical price for the oil. The Panel directed its consultants to estimate SAT's per barrel profit margin using actual sales prices. Therefore, during the verification period, the secretariat and the Panel's consultants reviewed SAT records relating to actual sales revenues and expenses for SAT's operations. From these records, the consultants were able to estimate that SAT's actual profit rate was US$5.226297 per barrel net of royalty but before payment of any taxes due.

453. Iraq contends that SAT's claim for loss of profits includes royalties and taxes. Iraq argues that royalty does not accrue when there is no

production because the value of the unrealized royalty is part of the crude oil reserves. Iraq also alleges that taxes are based on actual and realized income and are due when calculated accordingly. Iraq points out that SAT has not produced anything to substantiate the statement that Saudi Arabia has indicated that it will subject any award received by SAT to taxes and royalties.

454. The Panel has found no basis either in international law or in the practice of courts of major legal systems in cases such as this for deducting taxes potentially due from awards to an injured party. Iraq has not provided any legal authority in support of its position in this matter. Further, SAT has produced some evidence that suggests that Saudi Arabia would view any award on this claim as taxable income to SAT. Therefore, the recommendation is made on a gross basis. However, the Panel agrees that royalty only accrues on oil actually produced from the concession. As a result, Saudi Arabia will recover royalty if and when the oil is ultimately produced. Thus, the Panel will exclude from its recommendation the amount of any applicable royalty.

455. Using the actual figures for lost production and the profit margin estimated using actual sales and expense data, the Panel calculates that SAT's lost profits amounted to US$331,782,680 and recommends that SAT be awarded lost profits in this amount. As noted above, this amount is net of royalty and makes no deductions for any taxes payable.

456. Even if, contrary to what the Panel finds above, SAT were not limited to past performance in calculating losses and were permitted to project its losses over the entire life of the concession, the Panel would, however, still find that SAT has presented insufficient evidence that the investment programme would have been implemented at the time on which their calculations rely.

457. In its claim documentation and during the verification programme, SAT makes an extensive presentation on the nature, scope and expected benefits of the proposed investment programme. The key evidence submitted by SAT includes the April 1990 document entitled "1991-1995 Strategic Plan" (the "Plan") and a broad range of testimony from senior officials in SAT and Texaco regarding SAT's intent to implement the investment programme.

458. The Plan contains a general description of the development activity that SAT wished to pursue, the timetable it hoped to follow and the estimated costs for implementation of the development plans. The Plan was submitted to the Texaco Board of Directors, and the minutes of the relevant Board meeting record that the Plan was "endorsed" by the Board, although no specific expenditures were approved. SAT relies heavily on the Plan as proof of its intention to implement the investment programme.

459. SAT also argues that its Plan is supported by the fact that after liberation of Kuwait, substantial development did take place. Indeed, by January 1998, production from the PNZ had increased to almost double the pre-invasion levels.

460. The Panel does not question SAT's assertions that it would have implemented the investment programme; that is not relevant to the Panel's review of the claim. The question that must be answered is when would SAT have implemented the Plan had the invasion not occurred. On that point, SAT's evidence is weak and contradictory.

461. First, there were significant financial impediments to the implementation of the Plan. Numerous documents - including the Plan itself - state that future development expenditure in the PNZ was contingent upon the resolution of these financial issues. The resolution of these issues as a condition precedent to further development expenditure is the constant theme of communications virtually from the time that Texaco assumed control of Getty Oil. In spite of this documentation, SAT argues that the investment programme would have gone ahead even if the financial issues had not been resolved. SAT's own evidence, however, is contradictory, as some of it indicates that implementation of the Plan without resolution of the financial issues would not have occurred.

462. Second, the operations records of SAT do not support SAT's contentions. Given the size of the proposed investment programme, SAT's operation records should have contained evidence of SAT's intent to spend significant sums on the development projects identified in the Plan. The records contain no such evidence. SAT was unable to produce contracts, purchase orders, correspondence with potential contractors or other material that would have demonstrated that SAT was moving forward with its development plans. SAT also maintains a system of formal requests for expenditure authorization. The Panel's consultants have reviewed these documents for the period from Texaco's acquisition through to the invasion. The authorizations contain requests for funds for a minimal amount of test drilling. The remainder of these requests concern ordinary maintenance and non-developmental spending.

463. Third, the fact that the Plan contained specific plans for development does not necessarily prove that SAT would have implemented these plans. The Panel's consultants examined earlier strategic plans for SAT. Most of these plans also had provisions for capital expenditure for development. In each case, however, the actual amount of development work carried out under the plan was negligible. The evidence indicates that SAT customarily included capital expenditure plans in its budgets so that, in the event that the financial issues were resolved, SAT would not have to wait until the following budget year to begin seeking authorization for capital expenditure.

464. Based on the evidence presented, the Panel is of the view that SAT's evidence is not sufficient to prove that the investment programme on which much of the business losses portion of the amended claim is based would have been implemented within the period claimed by SAT. Thus, any claim for losses that is based on the implementation of the investment programme is, at best, speculative. For this reason, the Panel finds that the investment programme does not meet the Governing Council's requirement that business losses be "ascertained with reasonable certainty".

465. Taking into account the discussions and the adjustments detailed above, the Panel finds that, using the figures for lost production and profit margin estimated using actual production sales and expense data, SAT's lost profits before tax are US$331,782,680 on the lost production of 63,483,315 barrels and recommends compensation in this amount. This recommendation is itemized in the following table:

Table 33. SAT's business loss claims - recommended compensation

Claim element	Claim amount (original claim) (US$)	Claim amount (amended claim) (US$)	Recommended Compensation (US$)
Business Losses			
-loss of profits	616,490,470	-	331,782,680
-business interruption	-	1,380,135,392	0
Total	616,490,470	1,380,135,392	331,782,680

3. Extraordinary expenses: payments to others

466. In its amended claim, SAT requests compensation in the amount of US$$67,645,901 for losses it incurred as extraordinary expenses. SAT alleges that due to the invasion and occupation of Kuwait it incurred extraordinary expenses consisting of evacuating its personnel, setting up temporary headquarters, and reducing its workforce. Following the liberation, SAT alleges that it incurred costs in well blowout control, oil clean up and clearing ordnance. SAT also alleges that it incurred costs in the re-electrification of Mina Saud.

Table 34. Extraordinary expenses claim amounts

	Claim item/adjustment	Claim amount (amended claim) (US$)
(a)	Evacuation/relocation of personnel	1,163,017
(b)	Relocation of administrative facilities	676,952
(c)	Employee terminations and retirements	907,886
(d)	Maintaining inactive core work force	51,481,948
(e)	Personal effects losses and employee dislocation	11,117,980
(f)	Well blowout control, oil cleanup and ordnance removal	1,300,714
(g)	Re-electrification of Mina Saud	997,404
	Total	67,645,901

467. Iraq disputes this claim element for several reasons. Iraq alleges that SAT was unjustified in its decision to maintain a high number of permanent employees on inactive status and that SAT did not submit any supporting evidence with respect to payments for personal effects losses of its employees. Iraq also alleges that there is double counting for the amount claimed for inactive employee allowance. Iraq further alleges that cost and maintenance savings were not taken into account in SAT's claim for the re-electrification of Mina Saud because SAT had ceased using its own plant to generate electricity.

468. In support of this claim element, SAT's primary evidence consists of evidence of expenses such as invoices, authorization for expenditure ("AFE"), evidence of payments such as SAT's bank account statements and bank transfer confirmations from Riyadh Bank and details on post liberation repairs. SAT also produces affidavits and other internal documents such as a list of its employees, categories of SAT's employees, its employee policies, a list of employees affected by mandatory and early retirement, retirement benefits calculation worksheets, tables of payments to employees and excerpts of Kuwaiti labour legislation. In further support of its claim, SAT provided its consultants' report on extraordinary expenses. SAT's consultants' report on extraordinary expenses is based on payroll salary details, SAT cost summaries, wire transfer records, check copies, general ledger reports, and interviews with SAT management personnel.

469. Based on the evidence submitted by SAT and developed by the secretariat and the Panel's consultants during their review and verification of the claim, the Panel finds that SAT's extraordinary

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expenses were incurred as alleged by SAT and these expenses were the direct result of the invasion and occupation.

(a) Costs of evacuating and relocating SAT personnel

470. SAT requests compensation in the amount of US$1,163,017 for the costs of evacuating and relocating SAT personnel. At the time of the invasion, SAT alleges that it incurred the costs of evacuating its employees from the PNZ and returning those personnel who were not actively employed to their point of origin. After the occupation, SAT alleges that it incurred further expenses to support its employees who were returning to Kuwait to assist in the re-entry and restart efforts. These expenses included travel related expenses, furniture for the employees' apartments and housing rental in Kuwait City.

471. Based on the evidence submitted, the Panel's consultants concluded that the costs incurred by SAT to evacuate and relocate its personnel were reasonable. The Panel's consultants were of the opinion, however, that one of the invoices was not directly related to evacuation costs, but instead related to management visits to SAT's headquarters in the ordinary course of SAT's business. Accordingly, the cost related to this invoice in the amount of US$31,175.47 was excluded. The Panel's consultants also included two other invoices, in the total amount of US$22,869.07, which in their opinion, were directly related to evacuation costs. Based on evidence of possible double counting, the Panel excluded all claimed expenditure for furniture for rental apartments in the amount of US$312,993.90 with the exception of carpets in the amount of US$55,342.47.

472. After adjusting for the above costs and expenditure, the Panel finds that SAT's costs of evacuating and relocating its personnel should be reduced to US$897,059.

(b) Costs of relocating SAT's administrative facilities

473. SAT requests compensation in the amount of US$676,952 for the costs of relocating SAT's administrative facilities. During Iraq's unlawful invasion and occupation of Kuwait, SAT alleges that it incurred costs in re-establishing its administrative offices in Dhahran and then in Riyadh, Saudi Arabia. After 2 March 1991, SAT relocated its offices to Kuwait city pending the restoration of its Mina Saud facility. SAT's costs include rental of office space in Riyadh and Kuwait City, meetings related to SAT's return to the PNZ and costs of business travel associated with maintaining SAT as a going concern during the occupation.

474. Based on the evidence, the Panel concluded that SAT's claim for costs of relocating its administrative facilities is reasonable. However, a number of payments for air flights amounting to US$31,807.47 were not

related to relocation costs resulting from the invasion. Accordingly, the Panel excludes these costs. The Panel also concludes, that the costs SAT claims it incurred for the meetings related to SAT's return to the PNZ in the amount of US$148,444.06, do not constitute an extraordinary expense. The meetings were in fact scheduled meetings of SAT's executive committee or joint committee, usually held in the course of SAT's ordinary business. The meetings would have occurred irrespective of the invasion and occupation and often would be located overseas. The Panel therefore concludes that the actual cost of the meetings and related expenses are properly part of SAT's ordinary business expenditure and the Panel recommends no compensation for these costs.

475. After adjusting for the above costs and expenditure, the Panel finds that SAT's cost of relocating its administrative facilities should be reduced to US$496,701.

(c) Costs of terminating or retiring SAT employees

476. SAT requests compensation in the amount of US$907,886 for costs of terminating or retiring some of its employees while maintaining an inactive "core work force". These costs consist of monthly annuities relating to mandatory retirement in the amount of US$410,184, lump sum incentive payments to retire early under an extended "Early Separation Plan" in the amount of US$181,808 and lump sum final settlement payments to non-permanent employees terminated on 1 October 1990 in the amount of US$315,894.

477. Based on the evidence submitted, the Panel's consultants determined that SAT's claim for costs incurred in terminating or retiring SAT employees are accurately stated and are reasonable. However, the monthly annuities in the amount of US$410,184 paid to SAT's employees when it implemented a policy to lower the mandatory retirement age of its employees is not a direct result of the invasion. SAT had considered this policy change prior to the invasion and was authorized by its head office in New York to implement the policy change. Therefore, costs incurred by SAT resulting from this policy change did not constitute extraordinary expenses but ordinary business expenditure. Accordingly, the Panel recommends no compensation for these costs.

478. After adjusting for the above costs, the Panel finds that SAT's cost of terminating and retiring its employees is US$497,702 and recommends compensation in this amount.

(d) Costs of maintaining SAT's inactive work force

479. SAT requests compensation in the amount of US$51,481,948 for costs of maintaining its inactive work force. During the occupation, SAT retained

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some of its employees and purchased equipment to prepare for eventual reconstruction efforts. These costs consist of full pay including benefits and allowances for inactive employees from August 1990 through June 1995. SAT alleges that it had to make a commercial decision to retain some of its staff on full pay rather than terminate them. Under the Kuwaiti Labor Laws (Oil Sector) and SAT's company policy, SAT would have had to pay substantial severance payments based on length of service and level of salary if it had terminated its staff. Further, SAT alleges that it retained its employees the majority of whom are Saudi nationals, to maintain good relations with Saudi Arabia and to maintain a trained and skilled workforce.

480. The Panel's consultants used the average severance award in SAT's consultants' report to obtain an estimate of the level of termination payments. Based on the evidence submitted, the Panel's consultants conclude that the estimated termination payments would have been far higher than full salary payments.

481. Based on the above conclusions, the Panel finds that SAT's costs of maintaining its inactive work force in the amount of US$51,481,948 are reasonable and recommends compensation in this amount.

(e) Compensation for personal effects losses and employee dislocation

482. SAT requests compensation in the amount of US$11,117,980 for costs it incurred in compensating its employees for personal effects losses and in paying dislocation allowance. SAT alleges that it made payments amounting to US$9,500,618 to employees for personal effects that were not covered by insurance. SAT also alleges that it paid dislocation allowances in the amount of US$1,617,362 to retained employees for disruption and costs experienced when they had to abandon their homes and belongings.

483. Based on the evidence submitted, the Panel concludes that these costs are accurately stated and reasonable. The Panel therefore recommends that SAT receive compensation for the total costs incurred to compensate for its employees' personal effects losses and dislocation in the amount of US$11,117,980.

(f) Costs of well blowout control, oil cleanup and ordnance removal

484. SAT requests compensation in the amount of US$1,300,714 for the costs of well blowout control, oil clean up and ordnance removal. SAT alleges that its reconstruction efforts following the liberation included establishing security measures to prevent further looting, locating and removing a vast quantity of mines and unexploded ordnance, controlling burning wells and capping flowing wells, cleaning oil spills, repairing damaged wellheads and providing support for employees who returned. The

well blowout control costs and oil cleanup costs include SAT's 50 per cent share of costs in the amount of US$716,463.12 that were originally incurred by KOC in extinguishing fires in JO areas, SAT's purchase of firefighting material in the amount of US$26,416.44 and indirect firefighting costs in the amount of US$250,000 that the WBC Claim Panel indicated were not recoverable by KOC as a sole claimant due to the legal sharing arrangement governing the JO. SAT further alleges that it incurred costs in arranging ordnance removal in the amount of US$307,834.

485. Based on the evidence submitted, the Panel concludes that these costs are correctly stated and reasonable. The Panel finds, therefore, that SAT's total costs of well blowout control, oil cleanup and ordnance removal are US$1,300,714 and recommend compensation in this amount.

(g) Costs of re-electrification of Mina Saud

486. SAT requests compensation in the amount of US$997,404 for the costs of re-electrification of Mina Saud. SAT alleges that it was compelled to connect to the Kuwait Ministry of Electricity and Water ("MEW") to provide electricity at Mina Saud for its reconstruction efforts and resumption of its business. SAT asserts that prior to the invasion, it was self sufficient in generating electricity through a generator. These costs consist of design and modification of existing hardware in the amount of US$766,757.12 and for connection to the MEW power system in the amount of US$230,647.04.

487. Based on the verification review, the Panel's consultants discovered that SAT had already claimed for costs it incurred to re-supply electricity to Mina Saud in its physical assets claim element. Accordingly, the Panel recommends no compensation for SAT's claim for the costs of re-electrification of Mina Saud.

488. In summary, the Panel finds that SAT incurred extraordinary expenses in the amount of US$65,792,104 and recommends compensation in this amount.

Table 35. Extraordinary expenses - recommended compensation

Claim item/adjustment	Claim amount (amended claim) (US$)	Panel's recommended compensation (US$)
(a) Evacuation/relocation of personnel	1,163,017	897,059
(b) Relocation of administrative facilities	676,952	496,701
(c) Employee terminations and retirements	907,886	497,702
(d) Maintaining inactive core work force	51,481,948	51,481,948
(e) Personal effects losses and employee dislocation	11,117,980	11,117,980
(f) Well blowout control, oil cleanup and ordnance removal	1,300,714	1,300,714
(g) Re-electrification of Mina Saud	997,404	0
Total	67,645,901	65,792,104

4. Summary of recommendation

489. The Panel recommends total compensation be awarded to SAT in the amount of US$505,587,451 as itemized in the following table:

Table 36. Saudi Arabian Texaco - recommended compensation

Claim element	Claimant claim amount (original claim) (US$)	Claimant claim amount (amended claim) (US$)	Panel's recommended compensation (US$)
Physical assets	200,564,400	72,171,021	108,012,667
Business losses	616,490,470	1,380,135,392	331,782,680
Extraordinary expenses	63,203,800	67,645,901	65,792,104
Total	880,258,670	1,519,952,314	505,587,451

VIII. OTHER ISSUES

A. Currency exchange rate

490. The Panel notes that elements of some of the claims are stated in Kuwaiti dinars rather than in United States dollars. Because the Commission issues its awards in United States dollars, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed and assessed in currencies other than United States dollars.

491. The Panel notes that all prior Commission compensation awards have relied upon the United Nations Monthly Bulletin of Statistics to determine the commercial exchange rate of other currencies into United States dollars. The Panel has adopted that approach for this report and finds that the appropriate exchange rate to be applied to the claims advanced in the second instalment in Kuwaiti dinar is the rate prevailing on 1 August 1990, immediately prior to the invasion and occupation of Kuwait, as reported in the United Nations Monthly Bulletin of Statistics. (*See*, *e.g.*, *supra*, at page 73, note 13.)

B. Interest

492. All claim figures in the body of this report are analysed net of any individual interest claims advanced by the claimants.

493. In accordance with Governing Council decision 16, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16, the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing a decision on the methods of calculation and payment of interest.

494. The task of the Panel, therefore, is to determine the date from which interest will run for successful claimants in the Second Instalment.

495. Where a precise date of loss is apparent or discernable, the Panel recommends that interest run from that precise date.

496. In some cases, a precise date of loss cannot be established. In those cases, the Panel has been guided by the Report and Recommendations Made By The Panel Of Commissioners Concerning The First Instalment of "E2" Claims [S/AC.26/1998/7].

497. Thus, where the claim is for a loss of profits and that loss was incurred regularly over a period of time, the Panel has selected the mid-

point of that loss period as the date of loss for the purpose of calculating interest on the award.

498. Further, where the claim is for a loss of tangible assets, the Panel has selected 2 August 1990 (the date of Iraq's unlawful invasion and occupation of Kuwait) as the date of the loss, because that coincides with the claimants' date of loss of control over the assets in question.

499. The Panel has recommended awards to both KOC and SAT in respect of claims for certain extraordinary expenses. In each case, these expense were incurred over a period that extended from the date of the invasion to a date well after the liberation of Kuwait. In each extraordinary expense claim, the Panel has recommended that awards be made with respect to several loss elements belonging to several loss types. While the Panel was able to estimate that the claimants' compensable extraordinary expense losses occurred between 2 August 1990 and a particular date, it was not able to establish precise loss dates for each component of the compensable extraordinary expenses. The Panel is guided by its decision in the WBC claim regarding reconstruction payments made over a period of time for which it found that "the 'date' the loss occurred coincides with the period during which the relevant payments were made". (See WBC report at 65.) Therefore, the Panel selects the mid-point of the period over which the extraordinary expenses for which compensation is recommended were incurred as the date from which interest is to run.

500. In accordance with these determinations, the following is a table showing the loss elements for each claimant for which the Panel recommends compensation and the date from which the Panel recommends that interest awards on each loss element should run.

Table 37. Kuwait Oil Company recommended dates of loss

Claim element	Date of loss
Oil fields	2 August 1990
Ahmadi Township	2 August 1990
North and South tank farms	2 August 1990
Marine facilities	2 August 1990
Ras Al Zoor - Gas facility	2 August 1990
Projects under construction/ consideration	2 August 1990
Well blowout control - Al Awda and other physical assets	15 August 1991
Post well capping - Al Tameer	17 February 1993
Phase III	2 April 1995

501. The loss element for "projects under construction/consideration" contained claims both for tangible assets assembled for the projects and for future losses KOC attributed to the delay of the projects. Because the Panel recommends no compensation for the claimed future losses, it applies 2 August 1990, the date of loss for tangible assets.

502. The date of loss recommended for the last three loss elements referred to above represents the mid-point of the period over which the compensable losses included in each loss element were incurred.

Table 38. Kuwait Petroleum Corporation recommended dates of loss

Claim item	Date of loss
Stock at KOC premises	2 August 1990
Stock at KNPC premises	2 August 1990
Sulphur contract	2 August 1990
Fixed assets	2 August 1990

503. The loss element for the sulphur contract was presented as a contractual claim rather than a tangible assets claim. At the date of the invasion, however, the claimant was on the verge of presenting the documents that would have entitled it to payment on the contract. Thus, the Panel finds that 2 August 1990 is the appropriate date of loss for this loss element.

Table 39. Saudi Arabian Texaco - recommended dates of loss

Claim element	Date of loss
Physical assets	2 August 1990
Business losses	30 November 1992
Extraordinary expenses	14 January 1993

504. The date of loss recommended for the last two loss elements referred to above represents the mid-point of the period over which the compensable losses included in each loss element were incurred.

C. Claim preparation costs

505. All claim figures in the body of this report are net of any individual claim preparation cost claims advanced by the claimants.

506. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

IX. RECOMMENDATIONS

507. A summary of the claim amounts and the Panel's recommended compensation for each claim appears in the following table:

Table 40. Summary of the claim amounts and the Panel's recommended compensation for each claim

Claim	Claim no.	Claim amount (US$)	Recommended compensation (US$)
Saudi Arabian Oil Company	4002627	4,845,552,637	0
Arabian Oil Company	4000987	5,836,307,964	0
Kuwait Oil Company	4004160	2,512,896,177	2,216,550,792
Kuwait Petroleum Corporation	4003198	124,396,824	114,953,737
Saudi Arabian Texaco Inc	4000604	1,519,952,314	505,587,451
Total		14,839,105,916	2,837,091,980

Geneva, 19 February 1999

(Signed) Mr. Allan Philip
Chairman

(Signed) Judge Bola Ajibola
Commissioner

(Signed) Mr. Antoine Antoun
Commissioner

Notes

1. "Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991)" (S/22559), para. 20 and 25. The quoted sections were included in section II of the Secretary-General's report, which the Governing Council was instructed to take into account when implementing Security Council resolution 687 (1991). See paragraph 5 of Security Council resolution 692 (1991).

2. Article 38 (d) of the Rules provides as follows:

> "Unusually large or complex claims may receive detailed review, as appropriate. If so, the panel considering such a claim may, in its discretion, ask for additional written submissions and hold oral proceedings. In such a case, the individual, corporation, Government, international organization or other entity making the claim may present the case directly to the panel, and may be assisted by an attorney or other representative of choice. The panel will complete its review of the case and report in writing through the Executive Secretary its recommendations to the Governing Council within twelve months of the date the claim was submitted to the panel."

3. "Criteria For Additional Categories of Claims" (S/AC.26/1991/7/Rev.1) (hereinafter referred to as "decision 7")

4."Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures were also a Cause" (S/AC.26/1992/15), para. 6 (hereinafter referred to as "decision 15"). Decision 15 emphasizes that for an alleged loss or damage to be compensable, "the causal link must be direct" (para. 3).

5. Decision 9 (S/AC.26/1992/9). Decision 9 discusses the three main general categories of loss types that prevail among the category "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties.

6. Decision 15, para. 5.

7. "United Nations Compensation Commission Claim Form for Corporations and Other Entities (Form E): Instructions for Claimants", (hereinafter "Form E") para. 6. This requirement is repeated at article 35, para. 1 of the Rules.

8. Form E, para. 6.

9. Report and Recommendations made by the panel of Commissioners concerning the First Instalment of "E2" Claims" (S/AC.26/1998/7) (the First "E2" report). "E2" report, (S/AC.26/1998/7) para. 65.

10."E2" report, para. 65.

11. The historical events leading to the creation of the PNZ and the ownership of the oil and gas resources there are set forth in connection with the Arabian Oil Barter Claim discussed in paragraphs 57-58, supra.

12. "Report and Recommendations made by the panel of Commissioners appointed to review the Well Blowout Control Claim (The 'WBC' Claim)" (S/AC.26/1996/5 Annex).

13. The exchange rates used for 1 August 1990 for the Kuwaiti dinar is the "mid-point rate" for July 1990 at US$1=KD0.289 as reported in the United Nations Monthly Bulletin of Statistics, vol. XLIV, No. 12, December 1990 (ST/ESA/STAT/SER.1/220).

14.Due to rounding, there are small differences between the amounts in the summary tables and the sums of the amounts of the individual loss elements.

Annex VIII

Decision concerning the second instalment of E1 claims taken by the Governing Council of the United Nations Compensation Commission at its 88th meeting, held on 24 June 1999 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the Report and Recommendations made by the Panel of Commissioners concerning the second instalment of "E1" claims, covering five claims, 1/

1. Approves the recommendations made by the Panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, as noted in paragraph 507 of the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Japan	0	1	5,836,307,964	nil
Kuwait	2	0	2,637,293,001	2,331,504,529
Saudi Arabia	0	1	4,845,552,637	nil
United States	1	0	1,519,952,314	505,587,451
Total	3	2	14,839,105,916	2,837,091,980

---

* Previously issued as document S/AC.26/Dec.69 (1999).

1/ The text of the report appears in document S/AC.26/1999/10.

/...

3. Reaffirms that when funds become available payments shall be made in accordance with the decisions of the Governing Council concerning the priority of payment and payment mechanisms,

4. Recalls that when payments are made, Governments and international organizations shall, pursuant to the terms of decision 18 [S/AC.26/Dec.18 (1994)], distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

Annex IX

Report and recommendations made by the Panel of Commissioners concerning the third instalment of E1 claims*

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* Previously issued as document S/AC.26/1999/13.

CONTENTS

	Paragraphs	Page
List of claimants		306
List of currencies		306
List of tables		307
Introduction	1 - 6	308
I. PROCEDURAL HISTORY OF THE CLAIMS	7 - 12	310
II. LEGAL FRAMEWORK	13 - 32	311
A. Applicable law and criteria	13 - 13	311
B. Liability of Iraq	14 - 18	311
C. Jurisdiction	19 - 27	313
D. Evidentiary requirements	28 - 32	315
III. CLAIM OF GENOYER SA	33 - 62	317
A. Unpaid invoices	34 - 36	317
B. Unpaid letters of credit	37 - 45	318
C. Bank account in Iraq	46 - 48	319
D. Retention claims	49 - 51	319
E. Other contract losses	52 - 58	320
1. Ball valves contract	52 - 56	320
2. Walthon Wier contract	57 - 58	321
F. Compensation paid to others	59 - 61	321
G. Recommended award	62 - 62	322
IV. CLAIM OF MITSUBISHI CORPORATION	63 - 199	323
A. Losses for repatriation of employees and their families	68 - 84	324
1. Evacuation expenses	69 - 80	325
(a) Iraq and Kuwait	72 - 73	325
(b) Saudi Arabia	74 - 79	326
(c) Countries other than Iraq, Kuwait and Saudi Arabia	80 - 80	327
2. Stolen or damaged property of employees	81 - 84	327
B. Contract losses due to non-payment for delivered goods	85 - 114	327
1. Loss element 2	88 - 98	328
2. Loss element 12	99 - 106	330
3. Loss element 19	107 - 114	331

C. Contract losses for undelivered goods not resold . . . 115 - 133 332
   1. Loss element 6 . . . 117 - 124 332
   2. Loss elements 11, 14, 16, 17 and 18 . . . 125 - 130 333
   3. Loss elements 13 and 15 . . . 131 - 133 334
D. Contract losses for undelivered goods that were resold . . . 134 - 171 335
   1. Loss element 4 . . . 136 - 140 335
   2. Loss element 7 . . . 141 - 157 336
      (a) Losses on resales . . . 145 - 148 336
      (b) Storage and maintenance costs . . . 149 - 154 337
      (c) Delivery costs . . . 155 - 157 338
   3. Loss element 8 . . . 158 - 165 339
   4. Loss elements 20 to 28 . . . 166 - 171 341
E. Loss element 10 . . . 172 - 180 342
F. Other losses . . . 181 - 198 343
   1. Loss element 5 . . . 181 - 184 343
   2. Loss element 9 . . . 185 - 189 343
   3. Loss element 29 . . . 190 - 198 344
G. Recommended award . . . 199 - 199 346

V. CLAIM OF DOWELL SCHLUMBERGER (MIDDLE EAST) INC. . . . 200 - 225 347
   A. Unpaid accounts receivable . . . 203 - 212 347
   B. Loss of equipment . . . 213 - 215 349
   C. Loss of spare parts and supplies . . . 216 - 218 349
   D. Loss of furniture and personal effects . . . 219 - 220 350
   E. Loss of profits . . . 221 - 224 350
   F. Recommended award . . . 225 - 225 351

VI. CLAIM OF SHAFI BIN JABER & BROS CO . . . 226 - 274 352
   A. Loss of profit . . . 229 - 237 353
   B. Machinery . . . 238 - 246 354
   C. Spare parts . . . 247 - 250 356
   D. Tools and instruments . . . 251 - 254 356
   E. Tyres . . . 255 - 258 357
   F. The Portables and their contents . . . 259 - 268 357
      1. The Portables . . . 262 - 265 358
      2. Contents of the Portables . . . 266 - 268 358
   G. Financial obligations with respect to real property . . . 269 - 273 359
   H. Recommended award . . . 274 - 274 360

/...

VII. CLAIM OF CAPE EAST LIMITED 275 - 285 361
  A. Loss of tangible property 276 - 282 361
    1. Machinery and stocks 276 - 278 361
    2. Scaffolding 279 - 280 362
    3. Apartment contents 281 - 282 362
  B. Evacuation costs 283 - 284 363
  C. Recommended award 285 - 285 363

VIII. CLAIMS OF HALLIBURTON CLAIMANTS 286 - 401 364
  A. Background 286 - 290 364
  B. Declines in operating income 291 - 314 365
    1. Halliburton Company decline in operating income 292 - 296 365
    2. Otis Engineering decline in operating income 297 - 302 366
    3. Halliburton Limited decline in operating income 303 - 306 367
    4. Causation and mitigation 307 - 314 368
  C. Compensation paid to others 315 - 322 370
    1. Halliburton Company - compensation paid to others 316 - 317 370
    2. Halliburton Geophysical - compensation paid to others 318 - 318 370
    3. Otis Engineering - compensation paid to others 319 - 320 371
    4. Halliburton Limited - compensation paid to others 321 - 322 371
  D. Contract losses 323 - 377 372
    1. Halliburton Geophysical contract losses 324 - 339 372
    (a) Seismic Agreement - supply of equipment 324 - 334 372
    (b) Seismic Agreement - field training 335 - 337 374
    (c) Seismic Agreement -one time moving/ training fees 338 - 338 375
    (d) Seismic Agreement - loss of profits 339 - 339 375
    2. Halliburton Logging contract losses 340 - 368 375
    (a) Purchase Agreement - new equipment 340 - 342 375
    (b) Contract - used equipment 343 - 352 376
    (c) Technical support contract 353 - 354 378
    (d) Spare parts - accounts receivable 355 - 364 378
    (e) Spare parts - outstanding orders 365 - 366 380
    (f) Spare parts - loss of profits 367 - 368 380
    3. Otis Engineering contract losses 369 - 377 381
  E. Loss of tangible property 378 - 387 382
    1. Halliburton Limited loss of tangible property 379 - 383 382
    2. Otis Engineering loss of tangible property 384 - 387 384

/...

F. Bank accounts, securities and other intangibles . . . 388 - 400 385
  1. Otis Engineering - intangibles . . . 388 - 392 385
  2. Halliburton Limited - intangibles . 393 - 400 386
G. Recommended award . . . 401 - 401 388

IX. CLAIM OF WOOD GROUP ENGINEERING LIMITED. . . 402 - 442 389
A. Loss of profits . . . 404 - 409 389
B. Mobilization costs . . . 410 - 413 390
C. Employee loans . . . 414 - 417 391
D. Interest . . . 418 - 421 391
E. Tangible assets . . . 422 - 424 392
F. Payments to relatives of employees . . . 425 - 427 392
G. Contract payments to employees . . . 428 - 432 392
H. Humanitarian expenses . . . 433 - 435 393
I. Management time . . . 436 - 438 394
J. Mitigation expenses . . . 439 - 441 394
K. Recommended award . . . 442 - 442 395

X. CLAIM OF DRESSER INDUSTRIES, INC. . . . 443 - 448 396

XI. CLAIM OF NATIONAL-OILWELL. . . . 449 - 461 398
A. Resale and cancellation costs . . . 452 - 458 398
B. Loss of profit . . . 459 - 460 400
C. Recommended award . . . 461 - 461 400

XII. CLAIM OF OGE DRILLING INC. . . . 462 - 500 401
A. Loss of profit . . . 465 - 472 401
  1. Post-occupation profits . . . 468 - 472 402
B. Interest . . . 473 - 476 403
C. Employee time . . . 477 - 479 404
D. Office and professional expenses . . . 480 - 487 404
  1. Office expenses . . . 481 - 482 404
  2. Professional expenses . . . 483 - 487 405
E. Repatriation expenses . . . 488 - 490 405
F. Insurance expenses . . . 491 - 497 406
G. Relief payments . . . 498 - 499 407
H. Recommended award . . . 500 - 500 408

XIII. INCIDENTAL ISSUES . . . 501 - 513 409
A. Currency exchange rate . . . 501 - 504 409
B. Interest . . . 505 - 511 409
C. Claim preparation costs . . . 512 - 513 412

XIV. RECOMMENDATIONS . . . 514 - 514 413

/...

List of claimants

Name	Defined
Genoyer SA	"Genoyer"
Mitsubishi Corporation	"Mitsubishi"
Dowell Schlumberger (Middle East) Inc.	"Dowell"
Shafi Bin Jaber & Bros Co.	"Shafco"
Cape East Limited	"Cape"
Halliburton Company	"Halliburton Company"
Halliburton Geophysical Services, Inc.	"Halliburton Geophysical"
Halliburton Logging Services, Inc.	"Halliburton Logging"
Otis Engineering Corporation	"Otis Engineering"
Halliburton Limited	"Halliburton Limited"
Wood Group Engineering Limited	"Wood Group"
Dresser industries, Inc.	"Dresser"
National-Oilwell	"NOW"
OGE Drilling, Inc.	"OGE"

List of currencies

Name	Defined
French Franc	FF
Iraqi Dinar	ID
Kuwait Dinar	KD
Pound Sterling	£ stg.
Saudi Arabian Riyal	SRl
United States Dollar	US$
Japanese Yen	yen
United Arab Emirates dirham	Dh

List of Tables

Page

1. Summary of third instalment claimants 308
2. Summary of third instalment claims 309
3. Genoyer net claims 317
4. Genoyer recommended compensation 322
5. Mitsubishi net claims 324
6. Mitsubishi recommended compensation 346
7. Dowell net claims 347
8. Dowell recommended compensation 351
9. Shafco net claims 352
10. Shafco recommended compensation 360
11. Cape net claims 361
12. Cape recommended compensation 363
13. Summary of Halliburton claimants' claims 364
14. Halliburton recommended compensation 388
15. Wood Group net claims 389
16. Wood Group recommended compensation 395
17. Dresser net claim 396
18. Dresser recommended compensation 397
19. NOW net claims 398
20. NOW recommended compensation 400
21. OGE net claims 401
22. OGE recommended compensation 408
23. Third instalment claims - Summary of recommendations by loss type with interest start dates 411
24. Summary showing net claims and the Panel's recommended awards 413

Introduction

1. This is the third report to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review oil sector claims submitted by corporations, other private legal entities and public-sector enterprises (category "E1" claims), pursuant to article 38(e) of the Provisional Rules for Claims Procedure 1/(the "Rules").

2. This report contains the determinations and recommendations of the Panel with respect to the third instalment of E1 claims, comprising 14 claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules (the "Third Instalment").

3. The Third Instalment claims are all filed by non-Kuwaiti private corporations operating in the business of oil field service and supply. The claimants in this instalment typically advance a number of loss elements arising from the disruption of their oil field service and supply business, and the destruction of assets used in that business. Accordingly, while a number of individual loss elements fall outside this core enterprise, the Third Instalment deals predominantly with oil field service and supply losses.

4. The claimants in the Third Instalment are as follows:

Table 1. Summary of third instalment claimants

Name of claimant	Submitting country	UNCC claim No.
Genoyer SA	France	4001841
Mitsubishi Corporation	Japan	4000979
Dowell Schlumberger (Middle East) Inc.	Panama	4001207
Shafi Bin Jaber & Bros Co.	Saudi Arabia	4002548
Cape East Limited	United Kingdom	4002145
Halliburton Company	United States	4002232
Halliburton Geophysical Services, Inc.	United States	4002233
Halliburton Logging Services, Inc.	United States	4992234
Otis Engineering Corporation	United States	4002251
Halliburton Limited	United Kingdom	4002135
Wood Group Engineering Limited	United Kingdom	4002037
Dresser Industries, Inc.	United States	4002503
National-Oilwell	United States	4002565
OGE Drilling, Inc.	United States	4002567

/...

5. A number of claimants have sought compensation for interest on amounts claimed, and for claim preparation costs. As these issues are dealt with separately (see section XIII, *infra*), the body of this report deals with the claims net of interest and claim preparation costs. The original and net amounts claimed in the third instalment are summarized as follows:

Table 2. Summary of third instalment claims

Claimant		Gross Claim	Preparation cost	Interest	Net Claim
Genoyer	(FF)	67,535,458			67,535,458
	(US$)	289,553			289,553
	(ID)	8,424,477			8,424,477
Mitsubishi	(yen)	12,968,598,047			12,968,598,047
	(US$)	6,581,436			6,581,436
Dowell	(US$)	1,591,315			1,591,315
Shafco	(SRl)	40,278,848	82,850	8,925,370	31,270,628
Cape	(US$)	759,000			759,000
	(£ stg.)	50,096			50,096
	(KD)	10,465			10,465
Halliburton Company	(US$)	1,633,109	10,645	167,915	1,454,549
Halliburton Geophysical	(US$)	14,389,953	32,071	1,670,294	12,687,588
Halliburton Logging	(US$)	4,455,234	41,389	423,409	3,990,436
Otis Engineering	(US$)	6,696,537	24,510	962,862	5,709,165
Halliburton Limited	(US$)	13,160,208	73,187	1,326,346	11,760,675
Wood Group	(KD)	244,853			244,853
	(£ stg.)	185,740			185,740
Dresser	(US$)	342,819			342,819
NOW	(US$)	1,531,428			1,531,428
OGE	(US$)	425,213	9,302		415,911
Totals	(FF)	67,535,458			67,535,458
	(US$)	51,855,805	191,104	4,550,826	47,113,875
	(ID)	8,424,477			8,424,477
	(yen)	12,968,598,047			12,968,598,047
	(SRl)	40,278,848	82,850	8,925,370	31,270,628
	(£ stg.)	235,836			235,836
	(KD)	255,318			255,318

6. Five of the above claims were filed by related corporations, those being Halliburton Limited, Halliburton Company, Halliburton Geophysical Services, Inc., Halliburton Logging Services, Inc. and Otis Engineering Corporation (all collectively referred to in this report as the "Halliburton Claimants"). The Halliburton Claimants, with the exception of Halliburton Limited, subsequently merged into a single corporation under the name Halliburton Energy Services, Inc. As the Halliburton Claimants are related and have advanced similar claims, with similar forms of proof and overlapping documentation, these claims will be considered together in this report.

I. PROCEDURAL HISTORY OF THE CLAIMS

7. The secretariat of the Commission (the "secretariat") commenced a detailed review of the Third Instalment claims in May 1998. As a result of this review, a number of formal deficiencies in the claim files were identified, as were a number of areas where further documentation or information would clearly be required from the claimants. Accordingly, detailed notifications with respect to these deficiencies were issued by the secretariat to each of the claimants in the Third Instalment pursuant to article 34 of the Rules (the "Article 34 Notifications").

8. As a result of the technical nature of a number of the loss elements in the Third Instalment, independent loss adjusting and accounting experts were then retained to assist the secretariat and the Panel in their further review and evaluation of these claims.

9. The Panel issued its first Procedural Orders relating to the Third Instalment on 3 September 1998. These Procedural Orders also contained detailed interrogatories addressed to each of the Third Instalment claimants, seeking further evidence, explanation and in some cases legal argument. These interrogatories were prepared by the Panel based on its review of the claims, with the assistance of the secretariat and the expert consultants. The Procedural Orders contained a deadline of 30 October 1998 for responses to the interrogatories.

10. At the direction of the Panel, copies of the Procedural Orders, with the attached interrogatories, were sent by the secretariat to the Government of the Republic of Iraq.

11. In some instances, the secretariat issued further information requests to claimants as supplementary Article 34 Notifications. Similarly, the Panel specifically directed supplementary interrogatories to a number of the claimants.

12. After reviewing the claims, the claimants' responses to the Article 34 Notifications and the claimants' responses to interrogatories, the Panel

directed the expert consultants to prepare a preliminary report for each of the Third Instalment claims outlining their opinions on the appropriate valuation of compensable claim elements. This work was undertaken by the consultants with the close cooperation of the secretariat. The Panel reviewed these preliminary reports, and provided further instructions to the consultants and the secretariat as necessary. The consultants then prepared final reports, under the supervision of the secretariat. Those final reports assisted the Panel in performing its work and making the recommendations outlined in this report.

II. LEGAL FRAMEWORK

A. Applicable law and criteria

13. The law to be applied by the Panel is set out in article 31 of the Rules, which provides as follows:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

B. Liability of Iraq

14. According to paragraph 16 of Security Council resolution 687 (1991), "Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage,... or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait". The Panel notes that, when making resolution 687 (1991), the Security Council acted under Chapter VII of the United Nations Charter, which permits it to exercise its powers under that Chapter to maintain and restore international peace and security. The Security Council also acted under Chapter VII and under Article 29 of the United Nations Charter when making resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Given these provisions, the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved by the Security Council, and is not subject to review by the Panel.

15. The Governing Council has given some further guidance on what constitutes "direct loss, damage or injury" for which Iraq is liable under Security Council resolution 687 (1991). Paragraph 21 of Governing Council decision 7 is the seminal rule on "directness" for claims filed on behalf

of corporations and other legal entities (category "E" claims), and it provides, in relevant part, that compensation is available:

> "... with respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention." 2/

16. The list of possible causes of "direct loss" in paragraph 21 is not exhaustive and leaves open the possibility that there may be causes other than those enumerated. Decision 15 of the Governing Council confirms this: "[t]here will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait". 3/ Should that be the case, the claimants will have to show that a loss which was not suffered as a result of one of the five categories of events in paragraph 21 is nevertheless a "direct" result of Iraq's unlawful invasion and occupation of Kuwait.

17. While the language "as a result of" contained in paragraph 21 is not defined further in decision 7, Governing Council decision 9 provides guidance as to what may be considered to constitute "losses suffered as a result of" Iraq's unlawful invasion and occupation of Kuwait. 4/

18. Thus, decisions 7 and 9 provide guidance to the Panel as to how the "direct loss" requirement must be interpreted. It is against this background that the Panel will examine the claims discussed in this report to determine whether, with respect to each, the requisite causal link - a "direct loss" - is present.

C. Jurisdiction

19. With respect to the clause in paragraph 16 of Security Council resolution 687 (1991) relating to the debts and obligations of Iraq " .... arising prior to 2 August 1990 ...", the Panel refers to the report and recommendations made by the Panel of Commissioners concerning the first instalment of "E2" Claims (S/AC.26/1998/7) (the "E2 Report") wherein that Panel (the "'E2' Panel") concluded that the "arising prior to" clause was intended to exclude from the jurisdiction of the Commission the foreign debt of Iraq that existed at the time of Iraq's 2 August 1990 invasion of Kuwait. Having studied the normal business practices in Iraq prior to that country's accumulation of a significant amount of foreign debt during the course of the Iran-Iraq War (1980-1988), the "E2" Panel concluded that foreign contracting parties operating in Iraq at that time could generally expect to be paid within one to three months of the performance of its obligation.

20. The "E2" Panel therefore found that:

> "In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990." ("E2" Report, para. 90).

21. The "E2" Panel applied the above-referenced finding to specific factual situations including claims based on deferred payment arrangements where the Panel concluded that, regardless of whether deferred payment arrangements may have created new debts and obligations on the part of Iraq under a particular legal system, they did not do so for the purposes of resolution 687 (1991). Accordingly, the "E2" Panel concluded that such claims based on deferred payment arrangements do not constitute new debts as of their date that are separate and distinct from the original contracts and are therefore outside the jurisdiction of the Commission.

22. The "E2" Panel also considered claims where the claimants shipped goods to Iraq pursuant to contracts entered into prior to 2 August 1990. In such cases, "performance" was taken to mean the delivery of goods pursuant to the terms of the contracts. Applying the "arising prior to" clause, the "E2" Panel found that:

> "[W]here claimants had completed performance (i.e., delivered the goods, as evidenced by appropriate documentation) more than three months prior to 2 August 1990, claims for the recovery of amounts owed by Iraq for that performance shall be considered to have arisen

> prior to 2 August 1990 and, as such, are outside the jurisdiction of this Commission. In cases where deliveries of goods were made within three months prior to 2 August 1990, claims for compensation for amounts owed by Iraq for such performance meet the 'arising prior' to test". ("E2" Report, para. 105)

23. The Panel has analysed the "E2" Panel's findings and adopts its conclusions for the purposes of the review of these claims. Accordingly, the Panel finds that the terms 'debts and obligations of Iraq arising prior to 2 August 1990" means a debt or an obligation that is based on work performed or services rendered prior to 2 May 1990.

24. Further, the Panel notes that the debts and obligations that are affected by the "arising prior to" clause are debts and obligations of Iraq. The Panel has reviewed the "E2" Report where a definition of the word "Iraq" is offered. Specifically, the "E2" Panel concluded that "Iraq" means:

> "... the Government of Iraq, its political subdivisions, or any agency ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq". ("E2" Report, para. 116)

25. The Panel adopts this definition of the word "Iraq" in interpreting Governing Council resolutions, and Security Council resolution 687 (1991) as well. Accordingly, where the Panel has in this Report excluded claims or portions thereof on the basis that they are debts or obligations "of Iraq" arising prior to 2 August 1990, the Panel specifically finds that the debtor or obligor is the Government of Iraq, one of its political subdivisions, or any agency, ministry, instrumentality or entity controlled by the Government of Iraq.

26. The Panel wishes to reiterate that, although it is true that during the occupation of Kuwait, Iraq purported to repudiate certain debts, which may include the claims discussed within this Report, it follows from paragraph 17 of Security Council resolution 687 (1991) and Iraq's acceptance thereof that such repudiation is without effect and that such debts still exist.

27. The Panel also emphasizes that in reviewing such claims before it, which are within its jurisdiction, the Panel will analyse the claims in the light of the particular, relevant facts and circumstances of each claim, in particular, with respect to the question whether, as required in paragraph 16 of resolution 687 (1991), there is a direct loss resulting from Iraq's unlawful invasion and occupation of Kuwait. The Panel will be particularly watchful for claims wherein the claimants may be able to demonstrate a long

standing practice, dating back prior to 1980, of granting Iraqi buyers and contract parties long or deferred payment terms.

D. Evidentiary requirements

28. Article 35(1) of the Rules provides a general guidance on the submission of evidence by a claimant:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)."

29. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear that with respect to business losses there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded. 5/

30. All corporations filing category "E" claims were required to submit with their claim forms "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". 6/ In addition, claimants were instructed to include in the Statement of Claim the following particulars:

> "(a) The date, type and basis of the Commission's jurisdiction for each element of loss;
>
> (b) The facts supporting the claim;
>
> (c) The legal basis for each element of the claim;
>
> (d) The amount of compensation sought, and an explanation of how this amount was arrived at." 7/

31. Where claimants have submitted a statement of claim meeting the Commission's requirements and the statement is supported by documentary or other appropriate evidence, article 35, paragraph 1 of the Rules requires the Panel to "determine the admissibility, relevance, materiality and weight" of such evidence. In so evaluating the evidence before it, the Panel must determine whether it is sufficient to demonstrate the circumstances and amount of the claimed loss.

32. The Panel uses the term "overstated" in this report to convey only that it disagrees with a claimant's stated claim amount and that, in its opinion, the claimed amount as stated is larger than the amount supported by the evidence.

III. CLAIM OF GENOYER SA

33. Genoyer SA ("Genoyer") is incorporated in France, and is a member of a group of companies engaged in the manufacture and supply of products for the oil and gas industry throughout the world. Genoyer had various contractual relationships with customers in Iraq. Genoyer advances several claims arising from the interruption of these contractual relationships as a result of Iraq's unlawful invasion and occupation of Kuwait. These net claims can be summarized as follows:

Table 3. Genoyer net claims

Loss element	Claim (FF)	Claim (US$)	Claim (ID)
Unpaid invoices	2,323,381		
Unpaid letters of credit	1,198,979	289,553	
Bank account in Iraq			8,424,477
Retention claims	588,797		
Other contract losses	62,966,557		
Compensation paid to others	457,744		
Total	67,535,458	289,553	8,424,477

A. Unpaid invoices

34. Genoyer advances a claim based on unpaid invoices issued to Iraq Northern Oil Company ("INOC") in the amount of FF 625,228. In support Genoyer provides an extract from its books of account showing depreciation of the claimed amount in 1988, and a statement that the claimed amount has been approved by the claimant's auditors. Similarly, Genoyer claims FF 1,698,153 for non-payment of another claim against INOC. In total, Genoyer claims FF 2,323,381 for unpaid invoices issued to INOC. In support, Genoyer provides correspondence from 1987.

35. The Panel finds that the evidence in support of these claims is insufficient to assess whether these claims are within the jurisdiction of the Commission, or to support an award of any compensation. Specifically, the claims were initially advanced by Genoyer against INOC in 1987 and 1988, and the depreciation may or may not be related to the invoices to INOC, which themselves were not provided. Further, it is not apparent to the Panel that the FF 1,698,153 figure advanced by Genoyer was an amount agreed by INOC.

36. For the reasons outlined above, the Panel recommends no compensation for Genoyer's claims based on invoices allegedly unpaid by INOC.

B. Unpaid letters of credit

37. Genoyer also claims for the non-payment of two letters of credit by Rafidain Bank of Iraq, a bank owned by the State of Iraq. The letters of credit were secured in 1989 to provide payment in November 1990 and January 1991, being 360 days after the delivery of goods. The letters of credit are in the amount of FF 1,154,597 and US$289,553. In support of its claim with respect to these letters of credit, Genoyer has provided to the Commission copies of the letters of credit and the underlying invoices, and related correspondence and telexes with respect to the amounts due. Genoyer has also provided documentation outlining its unsuccessful attempts to recover these claims on the outstanding letters of credit.

38. With the assistance of its consultants, the Panel has determined that the underlying invoices total the amounts claimed. The Panel finds that Rafidain Bank only confirmed for payment the amount of FF 1,092,867 on the first letter of credit. The documentation confirms to the satisfaction of the Panel that the full amount of the second letter of credit was payable in 1991.

39. The Panel's first task is to determine whether the letters of credit are within the jurisdiction of the Commission. Because the letters of credit are a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by article 16 of Security Council resolution 687 (1991).

40. The Panel finds that the Rafidain Bank letters of credit in favour of Genoyer are debts of Iraq within the meaning of Security Council resolution 687 (1991).

41. Next, the Panel must determine when these debts arose, and specifically whether these debts arose prior to 2 August 1990, as discussed in section II.C., supra.

42. The Panel finds that Genoyer performed its obligation to deliver goods, and all of its obligations under the letters of credit, in 1989. As this performance occurred prior to 2 May 1990, the Panel finds that the debt or obligation of Iraq arose prior to 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). As a result, the claim arising from the letters of credit is outside the jurisdiction of the Commission.

43. Genoyer also claims a total of FF 44,382 for advising bank charges and commissions incurred in France with respect to the unpaid letters of credit. In support Genoyer provides correspondence from the advising banks and evidence of payment of the amounts claimed.

/...

44. The Panel finds that these advising bank fees are ancillary to the letters of credit themselves, and are therefore also outside the jurisdiction of the Commission. As a result, the Panel recommends no compensation to Genoyer for advising bank fees.

45. In summary, the Panel recommends no award to Genoyer for the letters of credit, and for the advising bank fees.

C. Bank account in Iraq

46. Genoyer also alleges that it has a bank account with Rafidain Bank in Iraq with a balance of 8,424,477 Iraqi dinars, and that it has lost access to these funds as a result of Iraq's unlawful invasion and occupation of Kuwait. In support, Genoyer has provided a document stating the claimed balance in an account held by a Genoyer subsidiary.

47. The Panel notes that Genoyer has provided no evidence that the funds held on deposit in Iraq have been "expropriated, removed, stolen or destroyed"; furthermore the Panel notes that these Iraqi dinar funds have at all relevant times been non-transferable and non-exchangeable. As such, the Panel finds that Genoyer has suffered no compensable loss with respect to funds held on deposit in Iraq. In this regard, the Panel refers to the E2 Report, wherein the "E2" Panel recommended the rejection of a claim for compensation related to a bank account in Iraq; the Panel specifically adopts the reasoning contained in paragraphs 136-140 of that report.

48. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

D. Retention claims

49. Genoyer claims that two retention amounts remain outstanding from a French contractor Technip Geoproduction ("Technip"), as a result of Iraq's unlawful invasion and occupation of Kuwait. Genoyer suggests that Technip was unpaid, and has therefore not paid Genoyer the retention amounts of FF 156,227 and FF 432,570. The documents provided to the Commission confirm that the first amount is undisputed by Technip, while the second amount is substantially undocumented. Both amounts relate to the Khabaz oil field development project in Iraq.

50. The Panel finds that Technip continues to be an active company which is able to meet its obligations. The Panel is satisfied that, to the extent Genoyer has a valid retention claim, it is a claim to be advanced against Technip. As Genoyer has such a claim, which must be determined on its own merits as against an existing and viable company, the non-payment of the retention claims to date cannot be considered to be a direct consequence of Iraq's unlawful invasion and occupation of Kuwait. The

Panel notes that Technip has filed its own claim with the Commission, which claim will be considered by this Panel in a later instalment.

51. Accordingly, the Panel recommends no compensation for Genoyer's retention claims.

E. Other contract losses

1. Ball valves contract

52. Genoyer claims FF 45,972,000 as losses resulting from a contract with the Iraq State Enterprise for Mechanical Industries for the sale of technology for the manufacture of ball valves. The claim is for the full contract amount. The contract was signed on 1 March 1990, with a term of 15 months, but the commencement date for this 15 month period is unclear.

53. Despite requests from the secretariat and the Panel, Genoyer has provided no evidence which would allow the Panel to assess any losses flowing from this ball valves contract. Furthermore, the contract is by its own terms subject to several conditions precedent, including approval of the "employer's" higher authorities, receipt by the contractor of a down payment, and the opening of a letter of credit. There is no evidence that any of these conditions precedent were met or that they could not have been met as a result of Iraq's unlawful invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation arising from this element of the claim.

54. Genoyer advances a further claim for FF 13,194,557 as "direct prejudice" arising from work not progressing on the ball valves contract. In support there is one document entitled "Estimation of Prejudice on Several Contracts" leading to a total of FF 13,194,557. The method of calculating this total is not stated by Genoyer, and no documentation has been provided to the Commission that would enable the Panel to verify or assess this loss.

55. The Panel finds that the further claim for "direct prejudice" arising from the ball valves contract must fail for the same reasons as the claim for the full contract amount (see para. 53, supra).

56. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

2. Walthon Wier contract

57. Genoyer claims that an unaffiliated company, Walthon Wier Pacific SA ("Walthon Wier") entered into an agreement with the Iraq State Enterprise for Mechanical Industries on 15 February 1990. Genoyer claims that it had a contractual entitlement to receive from Walton Wier a commission of 10 per cent on such contracts, based on a representation agreement between Genoyer and Walthon Wier. Genoyer further claims that the Walthon Wier contract did not proceed as a result of Iraq's invasion and occupation of Kuwait, and that it therefore suffered a loss of its anticipated commission in the amount of FF 3,800,000. 8/

58. The Panel notes that the Walthon Wier contract with the Iraq State Enterprise for Mechanical Industries contains several conditions precedent identical to those in the ball valves contract (discussed above), including approval of the "employer's" higher authorities, receipt by the contractor of a down payment, and the opening of a letter of credit. There is no evidence that any of these conditions precedent were met or that they could not have been met as a result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation arising from this element of the claim.

F. Compensation paid to others

59. Genoyer claims that two of its employees were held against their will in Iraq after Iraq's invasion and occupation of Kuwait, and that Genoyer incurred salary costs and other expenses with respect to these employees until they were released in October 1990. Genoyer claims a total of FF 457,744 with respect to these expenses. In response to a question from the Panel, Genoyer provided a schedule of costs totalling FF 391,619. Genoyer also seeks US$12,800 for expenses in Iraq. Genoyer has not reconciled these figures.

60. Despite requests from the secretariat and later from the Panel, the majority of Genoyer's claimed expenses are completely unsupported by any underlying receipts, vouchers or other documentation. The claimant has further provided two receipts for air travel prior to Iraq's invasion and occupation of Kuwait, without explanation. The Panel finds that the claim for undocumented expenses, and the claim for air travel prior to Iraq's unlawful invasion and occupation of Kuwait, must both fail on evidentiary grounds.

61. Genoyer has finally provided a receipt for FF 566 for the cost of air travel for one of the two employees held in Iraq, and a telex confirming payment of US$12,800 by Genoyer for expenses and accommodation for the two employees in Iraq during their detention. The Panel finds that these two expenses have been adequately documented, and the Panel finds that these expenses were incurred as a direct result of Iraq's unlawful invasion and

occupation of Kuwait. Accordingly, the Panel recommends an award of the United States dollar equivalent of FF 566, plus US$12,800, for compensation and expenses paid by Genoyer to others.

G. Recommended award

62. The recommendations of the Panel can be summarized as follows:

Table 4. Genoyer recommended compensation

Loss element		Claim	Recommendation (Original currency)	Recommendation (US$)
Unpaid invoices	(FF)	2,323,381	0	0
Unpaid letters of credit	(FF)	1,198,979	0	0
Unpaid letters of credit	(US$)	289,553	0	0
Bank account in Iraq	(ID)	8,424,477	0	0
Retention claims	(FF)	588,797	0	0
Other contract losses	(FF)	62,966,557	0	0
Compensation paid to others	(FF)	457,744	566	111
Compensation paid to others	(US$)		12,800	12,800
Totals	(FF)	67,535,458	566	111
	(US$)	289,553	12,800	12,800
	(ID)	8,424,477	0	0
Total recommendation (US$)				12,911

IV. CLAIM OF MITSUBISHI CORPORATION

63. Mitsubishi Corporation ("Mitsubishi"), a publicly-held corporation organized under the laws of Japan, is a large industrial conglomerate which operates in, among other areas, the oil field service and supply business. Mitsubishi had extensive commercial relations with numerous customers in Iraq, Kuwait and surrounding countries prior to Iraq's unlawful invasion and occupation of Kuwait; these included several supply contracts with Iraqi state-owned corporations in the oil, gas and fertilizer sectors and contracts for the export of textiles from Japan to Kuwait.

64. Mitsubishi seeks compensation in the amount of US$6,581,436 and yen 12,968,598,047, net of interest and claim preparation costs, for losses suffered as a result of Iraq's unlawful invasion and occupation of Kuwait. The largest portion of such claimed loss, whether considered in terms of monetary amount or number of loss elements, arises from alleged disruptions of Mitsubishi's oil field service and supply business.

65. The claimed loss is composed of twenty-nine individual loss elements, each of which has been assigned a number by Mitsubishi; for ease of reference, such numbering has been retained in this report. The Panel notes, however, that loss element 3 of Mitsubishi's claim will not be considered in this report. Due to the fact that loss element 3 does not arise from Mitsubishi's oil field service and supply business and presents significant factual similarities to an instalment of claims that will be considered by the "E2" Panel, it has been reallocated, pursuant to article 32(3) of the Rules, to the "E2" Panel for resolution as a separate claim.

66. Mitsubishi's claim can be summarized as follows:

Table 5. Mitsubishi net claims

Claim no.	Claim (US$)	Claim (yen)
1		169,450,232
2		2,146,000
3		199,940,000*
4	3,318	
5	48,052	
6	164,898	
7	830,667	121,037,617
8	1,837,629	117,622,219
9	372,469	
10		12,109,546,442
11		120,718,951
12		30,063,966
13		66,000
14		9,816,000
15		4,567,200
16		1,900,000
17		47,986,600
18		32,177,870
19		1,040,185
20	2,404	45,612
21	1,813	46,124
22	2,208	46,160
23	21,644	
24	7,350	152,860
25	4,758	81,267
26	3,639	
27	3,645	146,742
28	7,898	
29	3,269,044	
Total	6,581,436	12,968,598,047

* As discussed in para. 65, above, loss element 3 will not be considered in this report. It will be reviewed by the "E2" Panel as a separate claim.

67. Because there are significant similarities among the loss elements advanced by Mitsubishi, these will be presented and analysed in this report by loss type.

A. Losses for repatriation of employees and their families

68. In loss element 1, Mitsubishi claims that it incurred expenses to evacuate employees and families of employees that were stationed in Iraq, Kuwait, Saudi Arabia and other countries in the neighbouring region at the time of Iraq's invasion of Kuwait. Further expenses were allegedly incurred to compensate employees for household goods and personal effects

/...

stolen or damaged in Iraq and Kuwait. Mitsubishi seeks compensation in the amount of yen 169,450,232 for loss element 1. Of such amount, yen 46,146,777 represents evacuation expenses and yen 123,303,455 represents compensation for property left in Iraq and Kuwait by Mitsubishi employees.

1. Evacuation expenses

69. Mitsubishi claims that, due to Iraq's unlawful invasion and occupation of Kuwait, it had to evacuate 237 employees and dependants of employees from Iraq, Kuwait, Saudi Arabia and other countries in the Persian Gulf region and the Middle East. Of such persons, 72 were evacuated from Iraq and Kuwait, 78 from Saudi Arabia and 87 from Turkey and countries in the Middle East other than Iraq, Kuwait and Saudi Arabia. Mitsubishi seeks compensation in the amount of yen 46,146,777 for the resulting evacuation expenses, which include air fares from the relevant countries and other transportation costs.

70. In support of this part of its claim, Mitsubishi has provided to the Commission a large number of copies of internal vouchers representing payment of evacuation expenses. The Panel finds that the documentary evidence confirms that Mitsubishi incurred the claimed evacuation expenses, and that such expenses were equal to an average of yen 194,712 per person evacuated. Based on the advice of its consultants, the Panel calculated average rather than actual evacuation expenses per person because the claimed evacuation expenses did not vary significantly by location and because the large amount of supporting documentation submitted by Mitsubishi would have made it excessively time consuming to reconcile specific expenses to specific evacuated persons.

71. The Panel finds that the compensability of a proven evacuation expense incurred by Mitsubishi depends on the country from which the evacuation occurred. Mitsubishi incurred expenses to evacuate employees from Iraq, Kuwait, Saudi Arabia and certain other countries in the Middle East and Persian Gulf region. To determine the compensability of the claimed evacuation expenses the Panel is guided by decision 7 of the Governing Council 9/ and by the application of that decision to evacuation expenses by the Panel of Commissioners appointed to review claims submitted by governments and international organizations (the "F1" Panel). 10/

(a) Iraq and Kuwait

72. Decision 7 of the Governing Council states that losses resulting from departures from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991 were incurred as a result of Iraq's unlawful invasion and occupation of Kuwait. 11/ Proven expenses incurred by Mitsubishi to evacuate employees from Iraq and Kuwait are therefore compensable.

73. Based on the average per capita evacuation expense of yen 194,712, the Panel finds that Mitsubishi incurred expenses in the amount of yen 14,019,264 to evacuate 72 persons from Iraq and Kuwait and recommends compensation in the United States dollar equivalent of that amount.

(b) Saudi Arabia

74. In decision 7, only expenses incurred to evacuate individuals from Iraq or Kuwait, and not from other countries, are explicitly stated as being compensable. Decision 7 does, however, provide that any "loss suffered as a result of ... [m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1990" is compensable if adequately proven. 12/

75. In its discussion of a claim concerning the evacuation of persons from countries other that Iraq and Kuwait, the "F1" Panel found that this provision of decision 7

> "can serve as the basis for claims in respect of evacuation [from countries other than Iraq and Kuwait] provided a claimant can establish a direct causal link between its loss and Iraq's invasion and occupation of Kuwait. Such a link can be shown where actual military operations were conducted against a country from which persons were evacuated or where an actual - as opposed to speculative - threat of military action existed against a country from which an evacuation took place." 13/

76. In the same discussion, the "F1" Panel agreed with the "C" Panel's finding that "a claim based on an incident occurring outside Kuwait or Iraq needs to be more fully substantiated" to establish the necessary direct link between the loss and Iraq's unlawful invasion and occupation of Kuwait. The "F1" Panel did not, however, state whether such higher level of substantiation had been provided in support of the claims it was discussing. Instead, it requested information on the evacuation of individuals from other Middle Eastern countries during the relevant period from several governments and asked the secretariat to research the range and use of Iraqi missiles during Iraq's occupation of Kuwait. 14/

77. Based on the results of this investigation, the "F1" Panel found that military actions and the threat of military action were directed against Saudi Arabia and Israel as well as Iraq and Kuwait during the relevant period. It therefore recommended that compensation be awarded for proven costs incurred to evacuate persons from Saudi Arabia and Israel, but not from other Middle Eastern countries. 15/

78. The Panel adopts the "F1" Panel's findings that military operations or the threat of military action were directed against Saudi Arabia as well as Kuwait and Iraq. It therefore finds that proven expenses incurred by Mitsubishi in the evacuation of employees and their dependants from Saudi Arabia are compensable (Mitsubishi is not seeking compensation for expenses incurred in evacuating persons from Israel).

79. Based on Mitsubishi's average per capita evacuation expense of yen 194,712, the Panel finds that Mitsubishi incurred expenses in the amount of yen 15,187,536 to evacuate 78 persons from Saudi Arabia and recommends compensation in the United States dollar equivalent of that amount.

(c) Countries other than Iraq, Kuwait and Saudi Arabia

80. As discussed above, the "F1" Panel has found that expenses incurred to evacuate persons from countries other than Iraq, Kuwait, Saudi Arabia and Israel are not compensable (see paras. 72-77, *supra*). 16/ The Panel therefore recommends that no compensation be awarded with respect to the evacuation of Mitsubishi employees and their dependants from countries other than Iraq, Kuwait and Saudi Arabia.

2. Stolen or damaged property of employees

81. Mitsubishi also seeks compensation in the amount of yen 123,303,455 for expenses incurred to compensate evacuated employees for household goods, cash, food and other personal effects that were left in Iraq and Kuwait.

82. In support of this part of its claim, Mitsubishi has provided to the Commission a large number of copies of internal vouchers representing payment of such expenses.

83. The Panel finds that the evidence submitted confirms that Mitsubishi incurred the claimed expenses, and that these were a direct result of Iraq's invasion and occupation of Kuwait.

84. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of yen 123,303,455 be paid with respect to this portion of Mitsubishi's claim.

B. Contract losses due to non-payment for delivered goods

85. In loss elements 2, 12 and 19, Mitsubishi alleges that, as a result of Iraq's invasion and occupation of Kuwait, it has in several instances not received payment for goods that were delivered to customers in Iraq prior to 2 August 1990. Mitsubishi seeks compensation in the amount of yen 33,250,151 for such losses.

86. In support of this portion of its claim, Mitsubishi has provided contractual documentation including purchase orders and estimates, invoices, letter of credit documentation, bills of lading and air waybills.

87. The Panel notes that, because the claims discussed below all arise from contractual obligations created prior to Iraq's invasion and occupation of Kuwait, the Panel must determine whether each claim is excluded from the jurisdiction of the Commission on the basis that it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

1. Loss element 2

88. Mitsubishi states that on 16 May 1990 it shipped certain spare parts for telecommunications equipment to the State Establishment for Pipelines of the Ministry of Oil of Iraq (the "State Establishment of Pipelines") pursuant to an agreement entered into in 1988. Mitsubishi claims that it was not able to secure payment for the spare parts because the letter of credit for the transaction had expired prior to the shipment date and attempts by the State Establishment of Pipelines to pay for the goods by means of a wire transfer did not succeed. Mitsubishi has provided to the Commission documentary evidence showing that the parties were in the process of arranging for payment of the purchaser's debt when Iraq invaded Kuwait.

89. The State Establishment for Pipelines' debt to Mitsubishi remains unpaid. Mitsubishi seeks compensation in the amount of yen 2,146,000, the contract price of the spare parts, for the resulting loss.

90. As mentioned above, the Panel's first task is to determine whether loss element 2 is within the jurisdiction of the Commission. Because the loss element arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

91. The Panel finds that the State Establishment of Pipelines' obligation to pay Mitsubishi for the spare parts is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

92. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

93. The Panel finds that the spare parts were shipped on 16 May 1990. In addition, the Panel finds that because the contract between the parties was "FOB Japan", shipment of the spare parts was equivalent to performance by Mitsubishi. As such performance occurred after 2 May 1990, the Panel finds that the State Establishment of Pipelines' obligation to pay for the spare parts is a debt or obligation of Iraq that falls within the jurisdiction of the Commission. As a result, loss element 2 is within the jurisdiction of the Commission.

94. Accordingly, the Panel must decide whether there exists a causal relationship between Iraq's unlawful invasion of Kuwait and the State Establishment of Pipelines' failure to pay for the spare parts. In order to do so, it must consider the terms of the agreement between Mitsubishi and the State Establishment of Pipelines.

95. The Panel finds, based on documentary evidence provided to the Commission, that in 1988 Mitsubishi and the State Establishment of Pipelines entered into a binding agreement with respect to delivery of the spare parts. This agreement provided that payment for the spare parts would occur upon Mitsubishi's presentation of shipping papers to the letter of credit bank in Japan. The Panel therefore infers that it was the intent of Mitsubishi and the State Establishment of Pipelines that payment for the spare parts occur on, or soon after, the shipment date.

96. The documentary evidence provided to the Commission confirms that Mitsubishi shipped the spare parts to Iraq on 16 May 1990. Pursuant to the parties' agreement, Mitsubishi should have been able to obtain payment by presenting the shipping documents to the letter of credit bank in Japan on that date or soon afterwards. However, the letter of credit for the transaction had expired prior to the shipment date. Mitsubishi has stated that it was aware of this fact. Nevertheless, it assumed the risk of shipping the spare parts without a valid letter of credit in place because it had received oral assurances from representatives of the purchaser that payment would be made by means of a wire transfer. Based on Mitsubishi's statements, the Panel finds that the parties' understanding that payment would be effected by means other than the letter of credit did not affect the parties' original agreement that payment occur on, or soon after, the shipment date.

97. Accordingly, the Panel finds that the State Establishment of Pipelines' debt to Mitsubishi became due on, or soon after, 16 May 1990. However, Mitsubishi states that payment did not occur because of several misunderstandings between the State Establishment of Pipelines and its bankers. The documentary evidence provided shows that the debt was still outstanding on 2 August 1990, the date of Iraq's invasion of Kuwait. The Panel notes that Kuwait was invaded by Iraq approximately ten weeks after the date of shipment of the spare parts. The Panel finds that the length of such period exceeds the time reasonably necessary to correct any

misunderstandings that may have occurred between the purchaser and its bankers and effect payment for the spare parts, and that the parties' agreement that payment be made on, or soon after, 16 May 1990 was violated prior to the date of Iraq's invasion of Kuwait.

98. The Panel therefore finds that Mitsubishi's loss was incurred as a result of a contractual violation by the State Enterprise for Pipelines, resulting in an overdue debt, rather than as a result of Iraq's unlawful invasion and occupation of Kuwait. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

2. Loss element 12

99. In the case of loss element 12, Mitsubishi claims that it made four shipments of spare parts to the North Oil Company ("NOC"), an entity owned by the Ministry of Oil of Iraq. The first three occurred in August of 1987. The last was made on 19 January 1989. Payment for the spare parts was to occur 720 days after their shipment dates by means of letters of credit opened in favour of Mitsubishi by NOC.

100. NOC's debt to Mitsubishi remains unpaid. Mitsubishi seeks compensation in the amount of yen 30,063,966, the contract price of the spare parts, for the resulting loss.

101. The Panel's first task is to determine whether loss element 12 is within the jurisdiction of the Commission. Because loss element 12 arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by article 16 of Security Council resolution 687 (1991).

102. The Panel finds that NOC's obligation to pay for the spare parts is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

103. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

104. The documentary evidence provided to the Commission confirms that three shipments of spare parts occurred in August of 1987 and that the last one occurred in January of 1989. As performance occurred before 2 May 1990, the Panel finds that NOC's obligation to pay for the spare parts is a debt or obligation of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). As a result, the claim set forth in loss element 12 is outside the jurisdiction of the Commission.

105. Accordingly, the Panel need not decide whether there exists a causal relationship between Iraq's unlawful invasion of Kuwait and its failure to fulfill its obligation to pay for the spare parts.

106. Because the Panel finds that the Commission lacks jurisdiction over loss element 12, it recommends that no compensation be awarded for this claim.

3. Loss element 19

107. Mitsubishi claims that on 3 March 1990 it shipped certain spare parts for telecommunications equipment to the State Enterprise for Fertilizer ("SEF") pursuant to an agreement entered into in 1989. The letter of credit that had been put in place for the transaction required the confirmation of the London branch of Rafidain Bank ("Rafidain London"). Mitsubishi claims that it was not able to secure payment for the spare parts at the time of their shipment because the validity of Rafidain London's confirmation of the letter of credit had expired prior to shipment of the spare parts. Mitsubishi has provided documentary evidence showing that the parties were in the process of arranging for payment of SEF's debt when Iraq invaded Kuwait.

108. The purchaser's debt to Mitsubishi remains unpaid. Mitsubishi seeks compensation in the amount of yen 1,040,185, the contract price of the spare parts, for the resulting loss.

109. The Panel's first task is to determine whether loss element 19 is within the jurisdiction of the Commission. Because loss element 19 arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by article 16 of Security Council resolution 687 (1991).

110. The Panel finds that SEF's obligation to pay for the spare parts is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

111. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

112. The documentary evidence provided confirms that the spare parts were shipped on 3 March 1990. The Panel finds that, under the contract between the parties, performance occurred upon shipment of the spare parts by Mitsubishi. As performance occurred before 2 May 1990, the Panel finds that SEF's obligation to pay for the spare parts is a debt or obligation of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16

of resolution 687 (1991). As a result, the claim set forth in loss element 19 is outside the jurisdiction of the Commission.

113. Accordingly, the Panel need not decide whether there exists a causal relationship between Iraq's unlawful invasion of Kuwait and its failure to fulfill its obligation to pay for the spare parts.

114. Because the Panel finds that the Commission lacks jurisdiction over loss element 19, it recommends that no compensation be awarded for this claim.

C. Contract losses for undelivered goods not resold

115. Prior to 2 August 1990, Mitsubishi entered into several contracts to deliver line pipes, spare parts and accessories to certain Iraqi purchasers with operations in the oil, gas and fertilizer business. Mitsubishi claims that, as a result of Iraq's invasion and occupation of Kuwait, it was not able to deliver and secure payment for such items.

116. The resulting losses, for which Mitsubishi seeks compensation in the amount of US$164,898.06 and yen 217,232,621, are set forth by Mitsubishi as loss elements 6, 11, 13, 14, 15, 16, 17 and 18.

1. Loss element 6

117. Mitsubishi states that on 28 June 1990 it received an order of steel fittings from the State Company for Oil Projects ("SCOP") of Iraq. The order was made pursuant to a contract for the supply of line pipe and certain accessories to the North Rumaila Project in Iraq (the "North Rumaila Contract") that SCOP and Mitsubishi had entered into in 1989. The steel fittings were scheduled to be delivered in August of 1990 but were not shipped due to Iraq's invasion of Kuwait.

118. The contract price of the shipment was US$209,000. Mitsubishi states that it was able to cancel the production of steel fittings worth US$44,102. In addition, it claims that, because the steel fittings were very specialized and therefore impossible to resell, it scrapped items produced prior to 2 August 1990 in March of 1996. The scrap value achieved was employed to pay storage costs incurred until that date.

119. Mitsubishi seeks compensation in the amount of US$164,898, the contract price of steel fittings produced but not delivered to SCOP.

120. Mitsubishi has provided to the Commission parts of the North Rumaila Contract and certain other contractual documentation with respect to the order of steel fittings and debit notes evidencing payments by Mitsubishi to suppliers of the steel fittings. Mitsubishi also provided documentary evidence showing that the steel fittings were scrapped and that their scrap value was yen 37,372.

121. The Panel finds that the documentary evidence provided confirms that Mitsubishi incurred a loss with respect to the steel fittings. The Panel also notes that the military situation in the Persian Gulf region would have made it impossible to deliver the steel fittings to Iraq as planned. The Panel therefore agrees with Mitsubishi's contention that its inability to deliver steel fittings and secure payment for them was a direct result of Iraq's unlawful invasion and occupation of Kuwait and finds, pursuant to Governing Council decision 9, that the existence of the trade embargo against Iraq that was established by Security Council resolution 661 (1990) does not therefore affect compensability.

122. In addition, the Panel finds that the scrapping of the produced items for a very small gain supports Mitsubishi's claim that the items were very specialized and therefore difficult to resell to a third party. The Panel therefore finds that scrapping the items was appropriate mitigation of Mitsubishi's loss.

123. However, the Panel notes that, because the steel fittings were never delivered to Iraq, shipping expenses were not incurred with respect to them. It would be appropriate to deduct such expenses from compensation awarded with respect to this loss element if the North Rumaila Contract allocated them to Mitsubishi. The contractual documentation that has been provided to the Commission does not state whether Mitsubishi was responsible for such expenses. However, the Panel notes that Mitsubishi has not provided to the Commission the tender documents with respect to the North Rumaila project, which are a part of the North Rumaila Contract. The Panel also notes that Mitsubishi has not provided evidence indicating which party would bear expenses with respect to delivery of the steel fittings. Accordingly, the Panel concludes that Mitsubishi may have been responsible for such expenses. The Panel finds, after hearing the opinion of its consultants, that the saved shipping expenses would have been equal to approximately 5 per cent of the contract price of the order, or US$10,450. The Panel finds that such amount should be subtracted from Mitsubishi's claimed loss.

124. Accordingly, the Panel recommends that compensation in the amount of US$154,448 be awarded with respect to this loss element.

2. Loss elements 11, 14, 16, 17 and 18

125. In the case of loss elements 11, 14, 16, 17 and 18, Mitsubishi had entered into contracts to deliver spare parts to NOC, the State Enterprise for Northern Gas Industry ("SENGI"), the South Oil Company, the State Enterprise for Oil Refining and Gas Industry in the Southern Area and SEF, all entities owned by the Government of Iraq.

126. Mitsubishi states that a part of the items covered by such contracts were produced prior to 2 August 1990 and could not be delivered to their purchasers as a result of Iraq's invasion and occupation of Kuwait. Mitsubishi also states that it was therefore unable to mitigate its loss through resales to third parties because the spare parts had been manufactured to the purchasers' specifications. Mitsubishi seeks compensation in the amount of yen 212,599,421 for the resulting losses.

127. In support of these loss elements, Mitsubishi has provided to the Commission contractual documentation with respect to the orders of spare parts, letters of credit for the transactions and, except in the case of loss element 17, letters from suppliers of spare parts stating that the items intended to be delivered to Iraq were too unique to be resold.

128. Mitsubishi has not, however, provided evidence showing that the spare parts had been produced and that Mitsubishi incurred an expense for them. The letters of the suppliers only concern the use of the spare parts and whether they could have been resold to third parties; they do not state that the relevant spare parts were produced and sold to Mitsubishi. Nor has Mitsubishi explained what happened to the spare parts after 2 August 1990; no evidence of storage or scrapping of the spare parts has been provided.

129. In addition, the Panel finds that Mitsubishi has failed to prove that it could not have mitigated its loss through resales of spare parts to third parties. The Panel believes that the letters from suppliers that were provided are not sufficient evidence of the uniqueness of the spare parts.

130. The Panel therefore finds that Mitsubishi's claim with respect to loss elements 11, 14, 16, 17 and 18 must fail on evidentiary grounds. Accordingly, the Panel recommends that no compensation be awarded with respect to these loss elements.

3. Loss elements 13 and 15

131. Prior to 2 August 1990, Mitsubishi entered into two contracts to deliver spare parts to NOC and SENGI. Mitsubishi was able to cancel the production of such spare parts upon Iraq's invasion of Kuwait. In doing so, it claims to have incurred yen 4,633,200 in cancellation charges and seeks compensation in that amount in loss elements 13 and 15.

132. In support of loss elements 13 and 15, Mitsubishi has provided contractual documentation with respect to the orders of spare parts. It has not, however, provided evidence with respect to the cancellation charges to the Commission.

133. The Panel notes that Mitsubishi has not proved that it incurred the claimed cancellation charges. Accordingly, the Panel finds that Mitsubishi's claim with respect to these loss elements must fail on evidentiary grounds and recommends that no compensation be awarded.

D. Contract losses for undelivered goods that were resold

134. Prior to 2 August 1990, Mitsubishi entered into certain contracts to deliver steel plates, seamless steel casing and printed and dyed fabrics to purchasers in Iraq and Kuwait. Mitsubishi claims that, as a result of Iraq's invasion and occupation of Kuwait, it was not able to deliver such goods as intended. In order to mitigate its losses, Mitsubishi sold them to third parties at discounted prices.

135. The resulting losses, together with certain storage, shipping and other expenses incurred by Mitsubishi, are set forth in loss elements 4, 7 and 8 (which relate to sales of line pipe, steel plate and seamless steel casing intended for Kuwaiti and Iraqi purchasers) and 20, 21, 22, 23, 24, 25, 26, 27, and 28 (which relate to sales of dyed or printed fabric intended for Kuwaiti purchasers). Mitsubishi requests compensation in the amount of US$2,726,973 and yen 239,178,601 for such losses.

1. Loss element 4

136. Mitsubishi states that prior to Iraq's invasion of Kuwait it entered into a contract to supply steel plates to Burgan Contracting Co. WLL, a Kuwaiti company. The contract price of the steel plates ordered was US$5,086. The steel plates were shipped to Kuwait from Japan on 21 July 1990 but were re-directed to Singapore when Iraq invaded Kuwait on 2 August 1990. Mitsubishi claims that, after incurring storage charges of US$957, the steel plates were sold to a third party for US$2,725, at a loss of US$2,361 on the contract price.

137. Mitsubishi accordingly seeks compensation in the amount of US$3,318 for the resale loss and associated storage charges.

138. In support of loss element 4, Mitsubishi has provided to the Commission the original contractual documentation with respect to delivery of the steel plates to Kuwait and invoices evidencing resale transactions and storage costs.

139. The Panel finds that the documentary evidence provided to the Commission confirms that Mitsubishi incurred the claimed resale losses and storage expenses. The Panel also notes that the military situation in the Persian Gulf region would have made it impossible to deliver the steel plates as planned. The Panel therefore agrees with Mitsubishi's contention that its inability to deliver steel plates and secure payment for them was a direct result of Iraq's unlawful invasion and occupation of Kuwait and

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finds, pursuant to Governing Council decision 9, that the existence of the trade embargo against Iraq established by Security Council resolution 661 (1990) does not therefore affect compensability.

140. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of US$3,318 be awarded with respect to this loss element.

2. Loss element 7

141. Mitsubishi claims that prior to 2 August 1990 it entered into a contract for the supply of line pipe and accessories to SCOP pursuant to the North Rumaila Contract. The contract price of the line pipe ordered was US$3,480,000. Shipments of line pipe under the contract were due to begin after Iraq's invasion of Kuwait.

142. Mitsubishi states that upon Iraq's invasion of Kuwait it was able to cancel the production of an amount of line pipe equal to US$2,507,662 of the contract price without incurring penalties. However, the remainder of the line pipe ordered by SCOP had already been produced. Despite several attempts to sell it to third parties, Mitsubishi remained in possession of the line pipe until March of 1997, when it was sold to two purchasers for US$233,540 at a loss of US$738,798 on its original contract price of US$972,338.

143. In addition, Mitsubishi claims that it incurred charges of yen 101,766,266 and yen 14,257,030 for storage and maintenance of the line pipe, respectively. Mitsubishi also claims that it incurred expenses in the amount of US$91,869 and yen 5,014,321 to ship resold line pipe to its purchasers.

144. Mitsubishi accordingly seeks compensation in the amount of US$830,667 and yen 121,037,617 for storage, maintenance, delivery and other resale expenses incurred.

(a) Losses on resales

145. In support of its claim with respect to losses on resales, Mitsubishi has provided to the Commission the original contractual documentation with respect to the sale of the line pipe, including the Payment Agreement between Mitsubishi and State Oil Marketing ("SOMO") which governs payments made for the line pipe, and invoices evidencing resales to third parties.

146. The Panel finds that the documentary evidence provided to the Commission confirms that in 1997 Mitsubishi sold the line pipe at a loss of US$738,798 on its contract price. However, in reply to a question from the Panel, Mitsubishi has indicated that it has received a down payment of US$538,423 with respect to the line pipe from SCOP. Mitsubishi has

indicated that such down payment has been "frozen" in a deposit account and that it believes that the down payment might have to be paid back to SCOP because the line pipe has not been delivered. However, Mitsubishi has provided no further information or evidence with respect to the allegedly "frozen" account. Nor has it proved that the down payment would have to be reimbursed to SCOP; the Panel notes that the Payment Agreement between Mitsubishi and SOMO, which provides for the down payment, does not set forth circumstances under which the down payment is reimbursable. Because Mitsubishi has not proved that it does not have access to the down payment or that it will be required to reimburse it to SCOP or SOMO, the Panel finds that the down payment should be deducted from Mitsubishi's claimed resale loss. Accordingly, the Panel finds that Mitsubishi's actual loss on the resale transactions was equal to US$200,375.

147. The Panel also notes that the military situation in the Persian Gulf region would have made it impossible to deliver line pipe to Iraq as planned. The Panel therefore agrees with Mitsubishi's contention that its inability to deliver line pipe and secure payment for it was a direct result of Iraq's invasion and occupation of Kuwait and finds, pursuant to Governing Council decision 9, that the existence of the trade embargo against Iraq established by Security Council resolution 661 (1990) does not therefore affect compensability. 17/

148. Accordingly, the Panel finds that Mitsubishi's claimed resale loss was a direct result of Iraq's invasion and occupation of Kuwait and recommends that compensation in the amount of US$200,375 be awarded.

(b) Storage and maintenance costs

149. Mitsubishi has provided invoices with respect to storage and maintenance costs. Mitsubishi has also provided to the Commission copies of telexes and other correspondence evidencing efforts to sell the line pipe to third parties between November of 1991 and its resale date.

150. The Panel finds that Mitsubishi has proved that it incurred storage and maintenance costs in the claimed amount. Such expenses were incurred between the date of Iraq's invasion of Kuwait and March of 1997, when the line pipe was sold. The storage and maintenance charges were therefore incurred over a period of more than six years.

151. The Panel believes that it would have been difficult for Mitsubishi to mitigate its loss with respect to the line pipe through resales to third parties without incurring certain expenses to store and maintain the condition of the line pipe. However, the Panel must determine whether all the claimed storage and maintenance expenses were reasonably incurred.

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152. The Panel notes that the evidence provided shows that, with the exception of several attempts in 1994, Mitsubishi made only sporadic attempts to resell the line pipe. In addition, Mitsubishi has not provided evidence showing that market conditions for sales of the line pipe were relatively unfavorable prior to the date of their ultimate resale by Mitsubishi or that the line pipe was difficult to sell because it had special characteristics. The Panel therefore concludes that Mitsubishi could have resold the line pipe more rapidly than it did, and that its failure to do so was likely to have been the result of a poor commercial decision or negligence.

153. The Panel believes that one year after Iraq's invasion of Kuwait it should have been clear to Mitsubishi that it would not, within the foreseeable future, become possible to deliver the line pipe to SCOP. At that time, Mitsubishi acquired a duty to mitigate its loss through resales of the line pipe to third parties. The Panel believes that such resales could reasonably have been expected to be accomplished within a period of one additional year. The Panel therefore finds that it would have been reasonable to incur storage and maintenance costs with respect to the line pipe during the two years that followed the date of Iraq's unlawful invasion of Kuwait.

154. Accordingly, the Panel finds that storage and maintenance expenses incurred by Mitsubishi between 2 August 1990 and 2 August 1992 were a direct result of Iraq's unlawful invasion and occupation of Kuwait. The Panel has, with the assistance of its consultants, calculated that these amounted to yen 21,686,756 and recommends compensation in the United States dollar equivalent of that amount be awarded.

(c) Delivery costs

155. Mitsubishi has provided to the Commission a bill of lading, a freight list and a debit note evidencing expenses incurred to deliver the line pipe to its purchasers in March of 1997.

156. The Panel finds that the evidence provided confirms that Mitsubishi incurred the delivery expenses of US$91,869 and yen 5,014,321. The Panel finds that Mitsubishi reasonably incurred such expenses to mitigate its loss with respect to the line pipe contract with SCOP.

157. However, the Panel notes that, because the line pipe that was produced by Mitsubishi was never delivered to Iraq, shipping expenses were not incurred with respect to it. It would be appropriate to deduct such expenses from compensation awarded with respect to this loss element if the North Rumaila Contract allocated them to Mitsubishi. The contractual documentation that has been provided to the Commission does not state whether Mitsubishi was responsible for such expenses. However, the Panel notes that Mitsubishi has not provided the tender documents with respect to

the North Rumaila project, which are a part of the North Rumaila Contract. The Panel also notes that Mitsubishi has not provided evidence indicating which party would bear expenses with respect to delivery of the line pipe. Accordingly, the Panel concludes that Mitsubishi may have been responsible for such expenses. The Panel finds, after hearing the opinion of its consultants, that the saved shipping expenses would have been roughly equal to the claimed resale delivery costs. Accordingly, the Panel recommends that no compensation be awarded with respect to Mitsubishi's claimed delivery costs.

3. Loss element 8

158. Mitsubishi states that prior to Iraq's invasion of Kuwait it entered into a contract to deliver 23,472 metric tons of steel casing to SOC. The contract price of the steel casing was US$16,400,000. Prior to 2 August 1990 Mitsubishi had produced 9,301 metric tons of steel casing. Mitsubishi claims that, as a result of Iraq's invasion and occupation of Kuwait, it was not able to deliver such items to SOC.

159. To mitigate the resulting loss, Mitsubishi tried to sell the steel casing originally intended for SOC to third parties. Part of the steel casing was moved from Japan to Singapore, where Mitsubishi believed there was a better market for it. Mitsubishi sold the entire amount produced between April of 1991 and July of 1996. In doing so, it claims to have incurred a loss of US$1,837,629 on the original contract price of the steel casing. Mitsubishi also claims to have incurred storage and freight charges of yen 117,622,219 in connection with the resales.

160. Mitsubishi accordingly seeks compensation in the amount of US$1,837,629 and yen 117,622,219 for such losses. Applying the 1 August 1990 Japanese yen to United States dollar exchange rate to claimed expenses stated in yen, Mitsubishi's claim with respect to loss element 8 is equal to US$2,653,034. 18/

161. Mitsubishi has provided to the Commission the original contractual documentation with SOC, a schedule of resales of steel casing and invoices evidencing resale transactions and storage and freight charges.

162. The Panel notes that, in reply to a question posed to it in December of 1998, Mitsubishi indicated that it received a down payment of US$2,460,000 with respect to the order of steel casing from SOC. Mitsubishi has indicated that such down payment has been "frozen" in a deposit account and that it believes that it might have to pay it back to SOC because the line pipe has not been delivered. However, Mitsubishi has provided no further information or evidence with respect to the "frozen" account. Nor has it proved that the down payment would have to be

reimbursed to SOC; the Panel notes that the Payment Agreement between Mitsubishi and SOMO, which provides for the down payment, does not set forth circumstances under which the down payment is reimbursable. Because Mitsubishi has not proved that it does not have access to the down payment or that it will be required to reimburse it to SOC or SOMO, the Panel finds that the down payment should be set off against Mitsubishi's claimed loss.

163. The Panel notes that Mitsubishi is, as part of its claim for storage and freight charges of yen 117,622,219, seeking compensation for shipping and transportation expenses equal to yen 55,580,208. Applying the 1 August 1990 Japanese yen to United States dollar exchange rate, such amount is equal to US$385,305.

164. The Panel finds that Mitsubishi has not explained in detail why individual items of the total claimed shipping and transportation expense were incurred and how these resulted from Iraq's unlawful invasion and occupation of Kuwait. As a result, much of the evidence provided in support of this part of Mitsubishi's claim has limited probative value. In addition, the Panel notes that Mitsubishi has not stated whether it had, under the original contract with SOC, been allocated responsibility for shipping costs to Iraq. However, SOC's purchase order for the steel casing, which states the total contract value as being "C&F Umm Qasr", makes it apparent that Mitsubishi had agreed to bear such costs. Due to Mitsubishi's silence on this point, the Panel has no information with respect to the magnitude of the expense that Mitsubishi would have incurred to deliver the steel fittings to Iraq. The Panel is not, therefore, in a position to determine the extent, if any, to which any claimed shipping and transportation that resulted from Iraq's unlawful invasion and occupation of Kuwait exceeded shipping expenses that Mitsubishi would have been required to incur under its contract with SOC. For the reasons stated above, the Panel finds that Mitsubishi's claim for shipping and transportation expenses must fail on evidentiary grounds.

165. The Panel notes that Mitsubishi's total claim with respect to this loss element is equal to US$2,653,034. This amount is reduced to US$2,267,729 as a result of the Panel's finding that Mitsubishi's claim with respect to shipping and transportation costs must fail on evidentiary grounds. Because the magnitude of such reduced amount is smaller than the down payment of US$2,460,000 that Mitsubishi received from SOC, the Panel does not need to consider Mitsubishi's claimed resale and storage expenses and accordingly recommends that no compensation be awarded with respect to loss element 8.

4. Loss elements 20 to 28

166. Prior to 2 August 1990, Mitsubishi entered into several contracts to sell dyed or printed fabrics to purchasers in Kuwait. Mitsubishi claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, it was not able to deliver such fabrics and had to sell them at discounted prices to third parties instead.

167. Mitsubishi seeks compensation in the amount of US$55,359 for such losses, which are set forth in loss elements 20 to 28. In the case of all such loss elements except loss elements 23, 26 and 28, Mitsubishi is also advancing a claim for certain shipping charges related to the resales. Mitsubishi seeks compensation in the amount of yen 518,765 for such expenses.

168. In support of loss elements 20 to 28 Mitsubishi has provided to the Commission the original contractual documentation with respect to the planned sales to Kuwaiti purchasers. Mitsubishi has also provided invoices evidencing the storage charges, but these have not been translated into English. The Panel notes that all evidence provided by corporate claimants in support of their claims is required to be in English or accompanied by a translation into English. 19/

169. The Panel notes that the military situation in the Persian Gulf region would have made it impossible to deliver the fabric to Kuwait as planned. The Panel therefore agrees with Mitsubishi's contention that its inability to deliver the fabric and secure payment for it was a direct result of Iraq's unlawful invasion and occupation of Kuwait and finds, pursuant to Governing Council decision 9, that the existence of the trade embargo against Iraq established by Security Council resolution 661 (1990) does not therefore affect compensability. The Panel also finds that the evidence provided confirms that Mitsubishi incurred the claimed losses on resales.

170. However, the Panel finds that because invoices with respect to the claimed shipping charges have not been translated into English, Mitsubishi's claim with respect to such costs must fail on evidentiary grounds.

171. Accordingly, the Panel recommends that compensation in the amount of US$55,359 be awarded with respect to the resale losses claimed in loss elements 20 to 28, but that no compensation be awarded with respect to the shipping expenses.

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E. Loss element 10

172. On 2 December 1984 Mitsubishi Heavy Industries, Ltd. ("Mitsubishi Heavy Industries") and Mitsubishi entered into a lump sum turnkey contract with SCOP of Iraq for the construction of the Majnoon Heavy Oil Project (the "Majnoon Project").

173. Mitsubishi claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, SCOP stopped making payments with respect to debt related to the Majnoon Project. The resulting losses, for which Mitsubishi seeks compensation in the amount of yen 12,109,546,442, are set forth in loss element 10.

174. In support of loss element 10 Mitsubishi has provided to the Commission a summary table of debt payments, excerpts of the construction contract with respect to the Majnoon Project and correspondence and an extended financing agreement evidencing the rescheduling of payments by SCOP with respect to Majnoon Project debt.

175. The Panel's first task is to determine whether loss element 10 is within the jurisdiction of the Commission. Because loss element 10 arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

176. The Panel finds that SCOP's obligation to pay its debt to Mitsubishi is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

177. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

178. Because SCOP's debt appeared to have been rescheduled prior to Iraq's invasion of Kuwait, on 3 September 1998 the Panel asked Mitsubishi in a procedural order whether such debt "was ... accumulated prior to 1989". Mitsubishi replied on 14 October 1998 that the debt had become due under its original terms during or prior to 1989, when it was rescheduled. The Panel therefore finds that SCOP's obligation to pay its debt to Mitsubishi is a debt or obligation of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). As a result, the claim set forth in loss element 10 is outside the jurisdiction of the Commission.

179. Accordingly, the Panel need not decide whether there exists a causal relationship between Iraq's unlawful invasion and occupation of Kuwait and its failure to fulfill its obligation to pay for the spare parts.

180. Because the Panel finds that the Commission lacks jurisdiction over loss element 10, it recommends that no compensation be awarded with respect to it.

F. Other losses

1. Loss element 5

181. Mitsubishi alleges that as a result of Iraq's unlawful invasion and occupation of Kuwait it was not reimbursed for expenses it incurred in July of 1990 on behalf of SCOP for certain third-party inspections at the North Rumaila project in Iraq. Mitsubishi seeks compensation in the amount of US$48,052 for the resulting losses.

182. Mitsubishi has provided telex correspondence among SCOP, Mitsubishi and the third-party inspector showing SCOP's request that Mitsubishi make payments to the third-party inspector on its behalf, that the third-party inspector received such payments from Mitsubishi and that Mitsubishi requested reimbursement of such payments from SCOP.

183. Based on such evidence, the Panel finds that Mitsubishi made the payment with respect to the third party inspections on behalf of SCOP and that it was entitled to reimbursement of such amount. The Panel finds that such reimbursement did not occur as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

184. Accordingly, the Panel recommends that compensation in the amount of US$48,052 be awarded with respect to this loss element.

2. Loss element 9

185. Mitsubishi alleges the following facts with respect to loss element 9: On 14 April 1990, Mitsubishi entered into a contract with Kuwait Oil Company K.S.C. ("KOC") for the delivery of seamless steel tubing. Mitsubishi was not able to deliver such steel tubing during Iraq's occupation of Kuwait. After the liberation of Kuwait, KOC refused to accept delivery of the product unless its price was decreased. Mitsubishi agreed to decrease the price by 22.5 per cent in 1992 and was preparing to ship the products to KOC in April of 1993.

186. Mitsubishi claims that the discount offered to KOC was a result of Iraq's unlawful invasion and occupation of Kuwait and seeks compensation in the amount of US$372,469, the difference between the original contract

price and the discounted price ultimately accepted by KOC. Mitsubishi has converted the claimed amount from Kuwaiti dinars to United States dollars.

187. In support of loss element 9 Mitsubishi has provided to the Commission a purchase order of KOC with respect to the steel tubing and a copy of a letter from Equipment Company Ltd. to KOC confirming that Mitsubishi had agreed to offer a 22.5 per cent discount.

188. The Panel notes that Mitsubishi has not provided evidence that it tried to mitigate its loss through resales of the steel tubing to parties other than KOC, or that such efforts could not have succeeded. Nor has it provided evidence or an explanation of why the steel tubing could not have been sold at a price higher than that ultimately paid by KOC. Mitsubishi made a commercial decision to grant the discount to KOC. However, it has not proved that it was reasonable to grant the claimed discount to KOC or that the discount represents a compensable loss.

189. The Panel therefore finds that Mitsubishi's claim with respect to this loss element must fail on evidentiary grounds and recommends that no compensation be awarded.

3. Loss element 29

190. Mitsubishi alleges the following facts with respect to loss element 29: On 12 July 1989 Mitsubishi entered into the North Rumaila Contract with SCOP. Under such contract the parties agreed that 5 per cent of amounts payable to Mitsubishi for orders of line pipe and accessories would be retained by the purchaser until 20 November 1991 and 20 May 1993, when SCOP would be required to pay amounts retained in two equal tranches.

191. Mitsubishi claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, it never received payment of amounts retained by SCOP under the North Rumaila Contract and seeks US$3,269,044 in compensation for its resulting loss.

192. In support of this loss element Mitsubishi has provided to the Commission an invoice with respect to the total amount retained by SCOP under the North Rumaila Contract, a schedule listing individual retentions, invoices for shipments with respect to which money was retained by SCOP and certain contractual documentation with respect to the North Rumaila Project.

193. The Panel's first task is to determine whether loss element 29 is within the jurisdiction of the Commission. Because loss element 29 arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it

falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

194. The Panel finds that SCOP's obligation to pay the retention money to Mitsubishi is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

195. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

196. The Panel notes that the Payment Agreement between Mitsubishi and SOMO, which governs payments under the North Rumaila Contract, provides that 50 per cent of the amount retained by the purchaser with respect to an order under the North Rumaila Contract must be paid to Mitsubishi "upon the successful hydro-test but not later than 18 months from the [bill of lading] date of last shipment"; the remaining 50% of the retention money must be released 18 months after the release of the first half. In short, the Payment Agreement sets dates by which retention money must be paid to Mitsubishi, but states that payment may occur earlier if the supplied products pass a specific quality test. The evidence provided confirms that the claimed amount was retained by the purchaser and that it was due to be paid to Mitsubishi, in two equal tranches, on 20 November 1991 and 20 May 1993.

197. The Panel concludes that the purpose of the retention money was to ensure that any defective products supplied to SCOP under the North Rumaila Contract were repaired or replaced by Mitsubishi. As such, Mitsubishi was required, in order to be paid the retention money prior to or on 20 November 1991 and 20 May 1993, to stand ready to replace or repair defective products supplied under the North Rumaila Contract until the end of the retention period. The Panel finds that such ongoing readiness to perform was actual performance. Therefore, Mitsubishi's performance under the retention money arrangement continued until the dates when the retention money was due to be paid to Mitsubishi. As both such dates occurred after Iraq's unlawful invasion and occupation of Kuwait, the Panel finds that the purchaser's obligation to pay for the spare parts is a debt or obligation of Iraq that arose after 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). 20/ As a result, loss element 2 is within the jurisdiction of the Commission.

198. However, the Panel finds that, because the retention money was not due to be paid until well after the liberation of Kuwait, SCOP's failure to pay the retention money to Mitsubishi was not directly caused by Iraq's unlawful invasion and occupation of Kuwait. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

G. Recommended award

199. The recommendations of the Panel can be summarized as follows:

Table 6. Mitsubishi recommended compensation

Claim no.	Original Currency	Claim	Recommendation (Original currency)	Recommendation (US$)
1	(yen)	169,450,232	152,510,255	1,179,051
2	(yen)	2,146,000	0	0
3	(yen)	199,940,000	reallocated*	reallocated*
4	(US$)	3,318	3,318	3,318
5	(US$)	48,052	48,052	48,052
6	(US$)	164,898	154,448	154,448
7	(US$)	830,667	200,375	200,375
7	(yen)	121,037,617	21,686,756	167,660
8	(US$)	1,837,629	0	0
8	(yen)	117,622,219	0	0
9	(US$)	372,469	0	0
10	(yen)	12,109,546,442	0	0
11	(yen)	120,718,951	0	0
12	(yen)	30,063,966	0	0
13	(yen)	66,000	0	0
14	(yen)	9,816,000	0	0
15	(yen)	4,567,200	0	0
16	(yen)	1,900,000	0	0
17	(yen)	47,986,600	0	0
18	(yen)	32,177,870	0	0
19	(yen)	1,040,185	0	0
20	(US$)	2,404	2,404	2,404
20	(yen)	45,612	0	0
21	(US$)	1,813	1,813	1,813
21	(yen)	46,124	0	0
22	(US$)	2,208	2,208	2,208
22	(yen)	46,160	0	0
23	(US$)	21,644	21,644	21,644
24	(US$)	7,350	7,350	7,350
24	(yen)	152,860	0	0
25	(US$)	4,758	4,758	4,758
25	(yen)	81,267	0	0
26	(US$)	3,639	3,639	3,639
27	(US$)	3,645	3,645	3,645
27	(yen)	146,742	0	0
28	(US$)	7,898	7,898	7,898
29	(US$)	3,269,044	0	0
Totals	(yen)	12,968,598,047	174,197,011	1,346,711
	(US$)	6,581,436	461,552	461,552
	Total recommendation (US$)			1,808,263

* As discussed in para. 65, above, loss element 3 will not be considered in this report. It will be reviewed by the "E2" Panel as a separate claim.

V. CLAIM OF DOWELL SCHLUMBERGER (MIDDLE EAST) INC.

200. Dowell Schlumberger (Middle East) Inc. ("Dowell"), a Panamanian corporation, is a member of a multinational group of companies which specializes in oil field services. Dowell describes its operations as including the provision of equipment, products, materials and engineering services to oil company clients.

201. On 14 September 1989, Dowell entered into a 2 year "service ticket" contract for the supply of coil tubing services with South Oil Company of Iraq ("South Oil"). On the same date the parties entered into a Supplemental Contract dealing specifically with services and rates in the area of Southern Iraq. Essentially, Dowell contracted with South Oil to provide specialized equipment used to pump nitrogen and other substances into oil wells. These services were to be provided as ordered by South Oil, pursuant to separate service tickets or work orders, at prices specified in the Supplemental Contract.

202. Accordingly, at 2 August 1991 Dowell had expatriate employees, coil tubing equipment including coil tubing units mounted on trucks, and spare parts and supplies, on site in the area of Basra, Iraq. Dowell claims the net amount of US$1,591,315 as a result of Iraq's unlawful invasion and occupation of Kuwait, summarized as follows:

Table 7. Dowell net claims

Loss element	Claim (US$)
Unpaid accounts receivable	362,209
Loss of equipment	815,640
Loss of spares & supplies	208,451
Loss of furniture & personal effects	27,851
Loss of profits	177,164
Total	1,591,315

A. Unpaid accounts receivable

203. The Supplemental Contract specified that Dowell would issue monthly invoice summaries in United States dollars. The supplemental contract further required South Oil to pay 13.5 per cent of each monthly invoiced amount within 30 days in Iraqi dinars, with the remaining 86.5 per cent to be secured by promissory notes. The promissory notes were to be guaranteed by the Central Bank of Iraq, bearing interest of 5.5 per cent per annum, and were to be payable after 540 days from the date the monthly invoice summaries were submitted.

204. Dowell claims that South Oil owes to Dowell US$306,103 in unpaid receivables, and US$56,106 in interest on that amount. Five promissory notes were issued pursuant to the Supplemental Contract, dated between 2 May 1990 and 10 December 1990. These promissory notes secured the entire

principal amount outstanding with the exception of US$14,503, for which no promissory note was issued. Dowell claims that these amounts have not been paid as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

205. The Panel's first task is to determine whether the claim for unpaid accounts receivable is within the jurisdiction of the Commission. Because the unpaid accounts receivable arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

206. The Panel finds that the accounts receivable that were unpaid by South Oil are a debt of Iraq within the meaning of Security Council resolution 687 (1991).

207. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

208. The Panel finds that two promissory notes, dated 2 May 1990 and 16 May 1990, for a total amount of US$99,100 (plus US$8,176 in interest), were issued for services performed by Dowell before 2 May 1990. Accordingly, the Panel finds that these amounts are debts or obligations of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). As a result, the claim based on those 2 promissory notes is outside the jurisdiction of the Commission.

209. The Panel finds that three promissory notes, dated 1 June 1990, 20 July 1990 and 10 December 1990, for a total amount of US$192,500 plus US$15,882 in interest were issued for services performed by Dowell after 2 May 1990. Accordingly, the Panel finds that US$208,382 of the total amount claimed by Dowell is a debt or obligation of Iraq that arose after 2 August 1990 within the meaning of paragraph 16 of resolution 687 (1991). As a result, the claim based on these 3 promissory notes is within the jurisdiction of the Commission.

210. The Panel further finds that South Oil and the Central Bank of Iraq failed to pay the 3 promissory notes in the total amount of US$208,382 as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

211. The Panel further finds that the claim for US$14,503, for which no promissory note was issued, must fail for lack of evidence. The balance of the claim, in the amount of US$ 32,048, represents interest on any award made by the Commission. This claim will not be addressed at this point.

212. As a result, the Panel recommends an award of compensation to Dowell for unpaid accounts receivable in the amount of US$208,382.

B. Loss of equipment

213. Dowell also claims that its equipment in the vicinity of Basra, Iraq, including the coil tubing units mounted on trucks, were removed by Iraqi authorities at the "second outbreak of hostilities", which the claimant defines as the outbreak of hostilities between Iraq and coalition forces on or about 16 January 1991. Dowell seeks compensation for this equipment calculated based on landed replacement value in the total amount of US$815,640.

214. In support of this loss element, Dowell provided to the Commission a subsequently prepared list of these assets with their estimated replacement value. Dowell has not indicated the age or condition of the equipment. Dowell's auditors have confirmed the existence of the assets but not the age or valuation. Dowell has not provided to the Commission any contemporaneous documentation reflecting the value of these assets, or from which Dowell's valuation can be verified. Accordingly, this element of the claim must fail on evidentiary grounds.

215. As a result, the Panel recommends no compensation for Dowell's loss of equipment claim.

C. Loss of spare parts and supplies

216. In addition, Dowell claims that it was forced to abandon an inventory of spare parts and supplies in Iraq, and that this inventory was either taken by Iraqi authorities or destroyed by military activities. Dowell seeks compensation in the amount of US$208,451 as an estimate of the current landed replacement value of the spare parts and supplies. In the absence of a detailed inventory of these items (which was lost in Iraq), Dowell bases its claim on its average monthly expenditure on "supplies and maintenance", multiplied by 6 months, plus 35 per cent for freight. This leads to a figure of US$208,451, which Dowell claims as a "conservative" estimate of the spares on hand.,

217. Dowell's auditors verified the amounts booked to Dowell's accounts for equipment and maintenance. This on its own is insufficient evidence, and Dowell did not respond to a request from the Panel that it segregate the equipment and maintenance costs, which is required as the maintenance costs would not be helpful in determining the value of spare parts and supplies on hand. Further, Dowell did not provide shipping documentation, which was also requested. This element of the claim must therefore fail on evidentiary grounds.

218. As a result, the Panel recommends no compensation for Dowell's loss of spare parts and supplies claim.

D. Loss of furniture and personal effects

219. Dowell also seeks compensation in the amount of US$27,851 for the furniture and personal effects of its expatriate employees in Iraq, which items were abandoned in Iraq when those employees were evacuated. In support of this claim Dowell has provided 5 invoices issued for customs purposes when the items were originally shipped into Iraq. Despite a request from the secretariat, Dowell has not however demonstrated that it incurred any expense with respect to the loss of these items by reimbursing its employees or otherwise. As such, this element of the claim must fail on evidentiary grounds.

220. As a result, the Panel recommends no compensation for Dowell's loss of furniture and personal effects claim.

E. Loss of profits

221. Finally, Dowell claims for its lost net income under the Supplemental Contract. This claim is calculated for the 12 months of 1990, and for 11 months in 1991 (up to the termination of the contract), based on anticipated net income of 10 per cent of anticipated revenue. Anticipated revenue was calculated based on the actual revenue for the first 7 months of 1990, prorated over the balance of the term of the contract. This actual revenue was supported by a statement from Dowell's auditors. In the end result, Dowell claims US$177,164 in lost anticipated net income.

222. Dowell has calculated this loss element over the entire 1990 year, although income was earned up to at least July of 1990. This income is at least in part the income which forms the basis of the accounts receivable claim, discussed above.

223. In calculating Dowell's loss of profits, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property. With the assistance of the Panel's consultants, this loss element has been recalculated to eliminate the pre-August 1990 claim, leading to a loss of net income of US$117,624. However, this assumes that Dowell's net income would have been 10 per cent of anticipated revenue. Despite a request from the Panel, Dowell has provided no evidence in support of its claim that its net income would have been 10 per cent of revenue. Dowell states that this figure is "standard" in the oilfield business. However, the Panel has noted that margins in the oilfield business vary widely, and the Panel does not find that there was a standard margin in the oilfield business at the relevant time. Further, Dowell has not provided any evidence which would allow the Panel or its consultants to conclude that a lower or any margin should be applied, and

there is no evidence of Dowell's overall profitability in this region. As such, this element of the claim must fail on evidentiary grounds.

224. As a result, the Panel recommends no compensation for Dowell's loss of profits claim.

F. Recommended award

225. The recommendations of the Panel can be summarized as follows:

Table 8. Dowell recommended compensation

Loss element	Claim (US$)	Recommendation (US$)
Unpaid accounts receivable	362,209	208,382
Loss of equipment	815,640	0
Loss of spare parts & supplies	208,451	0
Loss of furniture & personal effects	27,851	0
Loss of profits	177,164	0
Total	1,591,315	208,382

VI. CLAIM OF SHAFI BIN JABER & BROS CO.

226. Shafi Bin Jaber & Bros. ("Shafco") is a limited partnership company registered in Dhahran, Saudi Arabia. Shafco describes itself as operating an automobile, truck and heavy equipment rental business. On 21 April 1987 Shafco entered into a four-year memorandum of agreement (the "Leasing Contract") with KOC and Getty Oil Company (together, the "Joint Operations") to lease certain heavy equipment and vehicles (the "Machinery") to the Joint Operations for use at the Wafra Oil Field ("Wafra") in the Kuwaiti sector of the Partitioned Neutral Zone between Saudi Arabia and Kuwait. Pursuant to the Leasing Contract, Shafco also provided personnel to operate and maintain the Machinery and built a maintenance workshop and garage at Wafra. The term of the Leasing Contract commenced on 15 November 1987.

227. Shafco claims that on 3 August 1990 Iraqi troops compelled it to end its operations at Wafra; as a result, the Joint Operations invoked the "force majeure" clause of the Leasing Contract on 21 August 1990, depriving Shafco of further revenues from the Leasing Contract. Shafco also claims that Iraqi troops stole the Machinery and tools and spare parts related thereto and caused extensive damage to certain portable accommodation and service facilities owned by Shafco (the "Portables"). Further, Shafco alleges that as a result of such losses it was not awarded a new contract for the provision of services similar to those covered under the Leasing Contract to the Joint Operations after the liberation of Kuwait.

228. Shafco seeks compensation in the amount of SRl 31,270,628, net of interest and claim preparation costs, for losses suffered as a result of Iraq's unlawful invasion and occupation of Kuwait. Shafco's claim is summarized as follows:

Table 9. Shafco net claims

Loss element	Claim (SRl)
Loss of profit	12,157,470
Machinery	17,850,515
Spare parts	354,569
Tools & instruments	118,449
Tyres	111,842
The Portables & their contents	246,117
Financial obligations with respect to real property	431,666
Total	31,270,628

A. Loss of profit

229. Shafco seeks compensation in the amount of SRl 12,157,470 for loss of income resulting from the termination of the Leasing Contract. This element of Shafco's claim has two components: First, Shafco alleges that Iraq's unlawful invasion and occupation of Kuwait caused it to fail to earn income under the Leasing Contract for the remainder of its term, a period of 15.5 months plus a six-month extension period. Second, Shafco alleges that income could have been earned from use of the Machinery after the expiration of the Leasing Contract for a period of 42 months, which Shafco claims is the remainder of the Machinery's useful economic life.

230. To calculate its lost profits, Shafco subtracted certain expenditures not incurred after 2 August 1990 from revenues expected during the term of the Leasing Contract and after its end.

231. In support of this loss element Shafco has provided the Leasing Contract, audited financial statements of Shafco with respect to periods both prior and subsequent to Iraq's invasion of Kuwait (the "Financial Statements") and contractual documentation relative to Shafco's failed bid to be awarded a new contract to provide heavy equipment and vehicles to the Joint Operations after the liberation of Kuwait.

232. The Panel finds that, as a result of Iraq's unlawful invasion and occupation of Kuwait, Shafco was unable to continue its performance under the Leasing Contract after 2 August 1990. It therefore turns its attention to the valuation of the resulting loss; in performing such valuation, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property.

233. The Panel is not persuaded by Shafco's claim that the term of the Leasing Contract would have been extended by six months pursuant to its extension clause. A written invocation of such clause by the Joint Operations would have been required in order for the term of the contract to be extended. Shafco has not provided evidence of such an invocation; nor has it shown that, if Iraq had not invaded Kuwait, it would have been likely to occur.

234. The Panel also rejects Shafco's assumption that, if Iraq's unlawful invasion and occupation of Kuwait had not occurred, it would have entered into a new contract to lease the Machinery to the Joint Operations at the end of the term of the Leasing Contract. Shafco argues that such a renewal of the Leasing Contract would have been foreseeable based on the prior practice of the Joint Operations and on certain logistical advantages of incumbency; it has not, however, provided documentary evidence in support of this assertion. Shafco's assertion that it would continue to derive income from the Machinery during the term of a second contract with the Joint Operations must therefore fail on evidentiary grounds.

235. Accordingly, the Panel finds that Shafco's loss of profits should be calculated over 15.5 months, the remaining term of the contract.

236. The Panel has, with the assistance of its consultants, therefore recalculated Shafco's claimed loss of profits. Specifically, it has subtracted costs with respect to Shafco's performance under the Leasing Contract from revenues expected by Shafco under such contract between 2 August 1990 and the end of its term. Such revenues were calculated by multiplying the "total monthly price" as stated in the Leasing Contract by 15.5 months, the remainder of the term of such contract. Costs were calculated based on historical "project costs" and "general and administrative expenses" stated in Shafco's Financial Statements for the first 7 months of 1990 and adjusted to reflect the relative contribution of the Leasing Contract to Shafco's overall performance.

237. Based on that calculation, the Panel finds that Shafco lost SRl 1,516,668 in profits as a direct result of Iraq's unlawful invasion and occupation of Kuwait and recommends that compensation be awarded in the United States dollar equivalent of that amount.

B. Machinery

238. Shafco seeks compensation in the amount of SRl 17,850,515 for Machinery allegedly stolen by Iraqi forces. Such amount represents the claimed value of the Machinery on 2 August 1990.

239. The Machinery was purchased by Shafco with funds borrowed from Trans Arabian Leasing Establishment ("Trans Arabian"). The documentation that governs such loan states that the Machinery is to remain the property of the lender until interest and principal on the loan are paid in full. A certificate of Trans Arabian that was provided shows that, on 11 October 1998, the loan had not yet been repaid and that title to the Machinery had not therefore passed to Shafco. However, another document shows that Trans Arabian had assigned its right to advance claims with respect to the Machinery to Shafco. No claim has been filed with the Commission by Trans Arabian, its owner, or any secured party under the loan agreement. The Panel accordingly finds that Shafco may properly advance a claim with respect to this loss element before the Commission.

240. In support of this loss element, Shafco has also provided the Leasing Contract, which contains specifications with respect to the Machinery, an extract of Shafco's asset register as of 31 July 1990 with original purchase prices of the Machinery, evidence of registration of the Machinery with the Ministry of the Interior of Saudi Arabia, a statement from the Ministry of the Interior of Saudi Arabia with respect to the cancellation of the registration of the Machinery with such ministry, witness statements with respect to looting by Iraqi troops at Wafra, and the Financial Statements.

241. The Panel finds that, together, the Leasing Contract, the documentation from the Ministry of the Interior of Saudi Arabia and witness statements provided by Shafco represent credible evidence of Shafco's legal responsibility for the Machinery prior to 2 August 1990 and of the subsequent looting of items of the Machinery by Iraqi troops. The Panel therefore turns its attention to Shafco's valuation of the resulting loss.

242. Shafco has calculated its claimed loss with respect to this loss element by adjusting the purchase price of the Machinery for inflation and depreciation to 2 August 1990. The Panel finds that this methodology is appropriate, and that Shafco employed accurate depreciation rates in calculating its loss. However, the Panel finds that Shafco has overstated the original purchase price of Machinery with respect to which compensation can be awarded and the inflation rate used in the calculation of its claimed loss.

243. Specifically, Shafco claims that the original purchase price of the Machinery, confirmed by reference to an asset register that sets forth the purchase prices of individual items, was SRl 21,937,097. Witness statements provided by Shafco show generally that items of Machinery were looted by Iraqi troops at Wafra. These do not, however, specify which of the items listed in the asset register were taken. The Panel has considered the possibility that, because of the mobility of the Machinery and its proximity to the border with Saudi Arabia, individual items were driven to safety immediately prior to the arrival of Iraqi troops at Wafra. The Panel has therefore relied on a statement of the Ministry of the Interior of Saudi Arabia with respect to the cancellation of registration of items of Machinery with such ministry in its determination of which of the items listed in the asset register may properly be included in Shafco's claim. This statement does not cover all items of Machinery listed in the asset register. The Panel finds that there is insufficient evidence that items not covered by such statement were looted and accordingly the Panel decreases the original purchase price of the Machinery with respect to which compensation can be awarded to SRl 19,137,669.

244. In addition, the Panel finds that the 7 per cent annual inflation rate employed by Shafco in the determination of the replacement value of the Machinery is overstated. After considering the opinion of its consultants, the Panel finds that a 2.5 per cent annual inflation rate is appropriate.

245. The Panel accordingly recalculated Shafco's claimed loss with respect to Machinery based on the revised original purchase price and annual inflation rate and the estimated depreciation rates set forth by Shafco. In doing so, it assigned to certain entirely depreciated items a residual value of 15 per cent of their original purchase prices.

246. Based on such calculation the Panel finds that, as a result of Iraq's invasion and occupation of Kuwait, Shafco suffered a loss equal to SRl 14,027,847 with respect to Machinery and recommends that compensation be awarded in the United States dollar equivalent of that amount.

C. Spare parts

247. Shafco seeks compensation in the amount of SRl 354,569 for losses with respect to spare parts allegedly stolen by Iraqi forces.

248. Shafco states that the value of the spare parts is stated in the Financial Statements. According to the Financial Statements, spare parts held by Shafco had exactly the same value in 1987, 1988, 1989 and the first 7 months of 1990. Shafco explains this uniformity by claiming that the stock of spare parts was always maintained at the same level by immediately replacing used spare parts. It has not, however, provided documentary evidence in support of this statement; instead, it claims that records of inventory counts with respect to the spare parts were kept at Wafra and lost during Iraq's occupation of Kuwait.

249. The Panel finds that, without supporting evidence, Shafco's assertion that spare parts at Wafra were immediately replaced when used is not credible because it contradicts ordinary business practices. The Panel also considers that the fact that identical values with respect to spare parts are stated in Financial Statements between 1997 and 31 July 1990 suggests that the original purchase price of the spare parts was repeated each year and that inventory counts of the spare parts were not taken.

250. The Panel finds that Shafco's claim with respect to this loss element must fail on evidentiary grounds and accordingly recommends that no compensation be awarded.

D. Tools and instruments

251. Shafco seeks compensation in the amount of SRl 118,449 for losses with respect to tools and instruments allegedly stolen by Iraqi forces.

252. In support of this loss element, Shafco has provided the Leasing Contract, which contains specifications with respect to required tools and instruments, and an extract of an asset register listing tools and instruments located at Wafra on 31 July 1990 with an original purchase price of SRl 118,449 and a net value after depreciation of SRl 13,998.

253. The Panel finds that Shafco has presented credible evidence of looting by Iraqi forces at Wafra and that the tools and instruments listed in the asset register correspond to those required by the Leasing Contract. In addition the Panel finds, based on the opinion of its consultants, that Shafco has applied appropriate depreciation rates with respect to the tools

and instruments. The Panel therefore finds that Shafco has suffered a loss in the amount of the depreciated value of the tools and instruments at 2 August 1990.

254. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of SRl 13,998 be awarded with respect to this loss element.

E. Tyres

255. Shafco seeks compensation in the amount of SRl 111,842 for losses with respect to tyres allegedly stolen by Iraqi forces.

256. In support of this loss element, Shafco has provided an invoice showing that on 29 July 1990 it purchased tyres for which it was charged the claimed amount of SRl 111,842.

257. The Panel finds that Shafco has presented credible evidence of looting by Iraqi forces at Wafra and that the invoice provided is sufficient evidence that the tyres were purchased. The Panel also finds that, having been purchased on 29 July 1990, it is probable that the tyres had not yet been used on 2 August 1990.

258. The Panel accordingly recommends that compensation in the United States dollar equivalent amount of SRl 111,842 be awarded with respect to this loss element.

F. The Portables and their contents

259. Shafco seeks compensation in the amount of SRl 148,669 for losses with respect to the Portables and SRl 97,448 for losses with respect to air conditioning units and furnishings of the Portables. Shafco claims that such items were either irremediably damaged or looted by Iraqi forces. According to Shafco, the amounts claimed represent the replacement costs of the Portables and their contents on 2 August 1990.

260. In support of this loss element, Shafco has provided certain invoices relative to the purchase of the Portables and their contents, witness statements, certain photographs taken at Wafra after the end of Iraq's occupation of Kuwait and an extract from an asset register of Shafco dated as of 31 July 1990.

261. The Panel finds that, together, the invoices, the extract from the asset register, the photographs and the witness statements provided by Shafco represent credible evidence of Shafco's ownership of the Portables and their contents on 2 August 1990 and of the subsequent looting or destruction of such items by Iraqi troops. The Panel therefore turns its attention to Shafco's valuation of the resulting loss.

1. The Portables

262. Shafco has calculated its claimed loss with respect to the Portables by adjusting the purchase price of the Portables, plus charges incurred with respect to their installation, for inflation and depreciation to 2 August 1990. The Panel finds that this methodology is appropriate. In addition, the Panel finds that the original purchase price employed by Shafco is confirmed by evidence provided to the Commission and that the claimed installation charges are reasonable.

263. However, the Panel believes that the 6.67 per cent annual inflation rate employed by Shafco in the determination of the replacement value of the Portables is overstated. After considering the opinion of its consultants, the Panel finds that a 2.5 per cent annual inflation rate is appropriate.

264. The Panel also believes that the cumulative 25 per cent depreciation rate employed by Shafco in calculating the replacement cost of the Portables is understated. After considering the opinion of its consultants, the Panel finds that a cumulative depreciation rate of approximately 34 per cent is appropriate.

265. Having recalculated Shafco's claimed loss with respect to the Portables based on the revised annual inflation rate and cumulative depreciation rate, the Panel finds that Shafco suffered a loss equal to SRl 121,152 with respect to the Portables. Accordingly, the Panel recommends that compensation with respect to the Portables be awarded in the United States dollar equivalent of that amount.

2. Contents of the Portables

266. In support of its claim with respect to the contents of the Portables, Shafco has provided an extract from an asset register dated as of 31 July 1990 and a bundle of invoices. Because the invoices were not translated from the Arabic and have otherwise proved to be illegible, the Panel has relied on the asset register extract to determine the magnitude of Shafco's claimed loss.

267. The asset register confirms the purchase prices stated by Shafco in its statement of claim but lists the contents as having a depreciated net value of SRl 22,931 on 31 July 1990, substantially less than Shafco's claimed loss. It is apparent, therefore, that the depreciation rate employed to calculate the depreciated net values stated in the asset register was considerably higher than that used by Shafco in the calculation of its claimed loss.

268 Because Shafco has not provided an explanation and evidence of why the asset register depreciation rate should not be employed to calculate

its loss with respect to the contents of the portables, the Panel recommends that compensation in the United States dollar equivalent amount of SRl 22,931 be awarded.

G. Financial obligations with respect to real property

269. Shafco seeks compensation in the amount of SRl 431,666 for losses with respect to financial obligations of Shafco. Pursuant to the Leasing Contract, Shafco was required to build a workshop and other buildings (the "Buildings") at Wafra; the ownership of such Buildings was to pass to the Joint Operations at the end of the term of the Leasing Contract. To finance such construction, Shafco entered into a financing arrangement (the "Financing Contract") with Trans Arabian.

270. Shafco claims that the Buildings were completed prior to Iraq's invasion of Kuwait. However, pursuant to the Leasing Contract these were to become the property of the Joint Operations at the latest at the end of its term. Accordingly, title to the Buildings passed to the Joint Operations when the Leasing Contract was terminated as a result of Iraq's unlawful invasion and occupation of Kuwait. Shafco nevertheless remained responsible for payments under the Financing Contract.

271. In support of this loss element Shafco has provided to the Commission the Financing Contract and a payment schedule worksheet showing payments to be made by Shafco under the Financing Contract. Shafco has also provided an agreement between Shafco and Trans Arabian, dated 21 August 1991, which states that Shafco's debt under the Financing Contract is rescheduled to an unspecified date, and a certificate of Trans Arabian which states that, as of 11 October 1998, Shafco owed SRl 1,110,004 under the Financing Contract.

272. The Panel finds that this documentation shows that Trans Arabian had made a loan of SRl 1,480,000 to Shafco with respect to the Buildings and that on 11 October 1998 Shafco still owed Trans Arabian a sum which exceeds the amount claimed by Shafco under this loss element. The Panel has already found that, as a result of Iraq's unlawful invasion and occupation of Kuwait, Shafco was deprived of revenues from the Leasing Contract after 2 August 1990; it cannot, therefore, draw on such revenues to repay its debt to Trans Arabian. The Panel has determined, with the assistance of its consultants, that Shafco's financial obligations with respect to the Buildings were deducted from revenues from the Leasing Contract to calculate Shafco's lost profits. It therefore finds that compensation recommended for this loss element would not duplicate any part of the compensation recommended with respect to Shafco's lost profits.

273. The Panel accordingly finds that Shafco has suffered a loss of at least SRl 431,666 and recommends that compensation be awarded in the United States dollar equivalent of that amount.

H. Recommended award

274. The recommendations of the Panel can be summarized as follows:

Table 10. Shafco recommended compensation

Loss element	Claim (SRl)	Recommendation (SRl)	Recommendation (US$)
Loss of profit	12,157,470	1,516,668	404,985
Machinery	17,850,515	14,027,847	3,745,754
Spare parts	354,569	0	0
Tools & instruments	118,449	13,998	3,738
Tyres	111,842	111,842	29,864
The Portables & their contents	246,117	144,083	38,473
Financial obligations with respect to real property	431,666	431,666	115,265
Total	31,270,628	16,246,104	4,338,079

VII. CLAIM OF CAPE EAST LIMITED

275. Cape East Limited ("Cape"), a corporation registered in the United Kingdom, is a specialist insulation and scaffolding contractor. Cape states that at 2 August 1990 it had "recently" completed a contract for Kuwait National Petroleum Corporation at Mina Abdulla Refinery for piping and thermal insulation work. In addition, Cape was active as a subcontractor on a project in Basra, Iraq. The net claims advanced by Cape can be summarized as follows:

Table 11. Cape net claims

Loss element	Claim (US$)	Claim (£ stg.)	Claim (KD)
Loss of tangible property	759,000	30,246	10,465
Evacuation costs		19,850	
Total 21/	759,000	50,096	10,465

A. Loss of tangible property

1. Machinery and stocks

276. Cape states that it had machinery and stocks at a shipping terminal in Basra, Iraq. Cape states that the machinery and stocks were left at Basra as a result of Iraq's unlawful invasion and occupation of Kuwait and were not subsequently recovered. In support of this aspect of the claim Cape has provided a list of machinery and stocks with an ascribed value of £ stg. 30,246, which is the amount claimed. Original purchase invoices are provided as evidence, and Cape states that these invoice amounts exceed the amount claimed.

277. Cape was asked to explain why the invoices provided in support of the claim for machinery and stocks exceed the amount claimed. In response, Cape points to an advance received from the main contractor. However, Cape's initial submission noted that certain of the items in question had been utilized. Indeed, the supporting invoices were addressed to the main contractor (for customs purposes), and they reflect the fact that the largest portion of this claim is for insulation materials. The Panel notes that it has no information as to whether these insulation materials were incorporated into the Basra project, or whether their ownership had passed to the contractor.

278. With the assistance of its consultants, the Panel has identified one invoice for machinery and equipment that the Panel is satisfied relates to machinery owned by Cape which would not have been incorporated into the Basra project. That invoice is for Dh 29,500. Based on the advice of its consultants, the Panel is satisfied that this equipment would have retained

a value of no less than 50 per cent of the invoice value, and accordingly the Panel recommends an award of Dh 14,750. The balance of the claim for machinery and stocks must fail on evidentiary grounds.

2. Scaffolding

279. Cape also claims for a large quantity of scaffolding held at Wafra, Kuwait. Cape states that this scaffolding was abandoned at Wafra as a result of Iraq's unlawful invasion and occupation of Kuwait, and was therefore not recovered. In support of this claim, Cape has provided a statement indicating a claim for 42,000 linear metres of scaffolding at US$759,000. Invoices are also provided for the scaffolding, although these total only Dh 253,459. Cape states that the remainder of the scaffolding invoices were destroyed in Kuwait. Cape has also provided documents related to its contract in Kuwait.

280. The Panel is satisfied from the evidence presented that there was a quantity of scaffolding on site, which was not recovered as a result of Iraq's unlawful invasion and occupation of Kuwait. With the assistance of its consultants, the Panel has determined that the majority of the scaffolding was in the range of 2.5 years old, and that the majority of the value of the claim is for scaffolding boards. Based on the advice of its consultants, the Panel has determined that scaffolding boards of this type and in this location would have a maximum useful life of approximately 4 years. Accordingly, the Panel finds that the value of this loss is the residual value of the scaffolding (for its remaining 1.5 years of useful life), applied only to the scaffolding for which invoices have been provided, which amounts to Dh 95,047. Accordingly, the Panel recommends compensation of the United States dollar equivalent amount of Dh 95,047 for this loss element.

3. Apartment contents

281. Cape claims that it had personal property and documentation located at its manager's apartment in Kuwait, which items were not recovered as a result of Iraq's unlawful invasion and occupation of Kuwait. This personal property included electronic equipment such as a facsimile machine, and various items of furniture. In support of this claim Cape provides a list of the missing items, prepared from information provided by the claimant's Kuwaiti manager, with a total listed value of KD 10,465. Cape states that supporting invoices are unavailable as these documents were destroyed in Kuwait.

282. The Panel notes that Cape has not provided any witness statement or other documentation in support of the list of apartment contents, or the ownership of the subject items. The Panel has no primary or contemporaneous documentation from which it can verify the fact of the loss or the amounts claimed. The Panel requested a statement of the approximate

age of the lost items, which was not provided by Cape. In the circumstances, the Panel has been unable to quantify the value of this loss and accordingly recommends no compensation for this loss element.

B. Evacuation costs

283. Finally, Cape claims its costs associated with the evacuation of "relevant personnel", which it describes as being 11 workers from Basra, Iraq, and 1 manager plus his family from Kuwait. Cape claims £ stg. 19,850 for these costs, supported by various invoices and airline tickets issued in other currencies.

284. One of the documents provided by Cape in support of this claim is a debit note from the main contractor on the Basra project, indicating that the contractor paid for the initial evacuation costs and charged these costs back to Cape. As this debit note was accepted by Cape, in the amount of US$37,819, the Panel finds that this is the amount paid by Cape for the evacuation of its personnel from Iraq and Kuwait. Accordingly, the Panel recommends compensation for this loss element in the amount of US$37,819. 22/

C. Recommended award

285. The recommendations of the Panel can be summarized as follows:

Table 12. Cape recommended compensation

Loss element		Claim	Recommendation (Original currencies)	Recommendation (US$)
Loss of tangible property	(US$)	759,000	0	0
	(£ stg.)	30,246	0	0
	(KD)	10,465	0	0
	(Dh)		109,797	29,909
Evacuation costs	(£ stg.)	19,850	0	
	(US$)		37,819	37,819
Totals	(US$)	759,000	37,819	37,819
	(£ stg.)	50,096	0	0
	(KD)	10,465	0	0
	(Dh)		109,797	29,909
			Total recommendation	(US$) 67,728

VIII. CLAIMS OF HALLIBURTON CLAIMANTS

A. Background

286. As discussed in paragraph 6, supra, the Halliburton Claimants are related corporations that have advanced similar claims based on similar forms of proof, including similar accounting records and policies. The amounts claimed, net of interest and claim preparation cost claims, are summarized as follows:

Table 13. Summary of Halliburton Claimants' claims

Claimant	Claim item	Claim (US$)
Halliburton Company	Decline in operating income	1,071,000
	Compensation paid to others	383,549
	Sub-total	1,454,549
Halliburton Geophysical	Compensation paid to others	315,613
	Contract losses	12,371,975
	Sub-total	12,687,588
Halliburton Logging 23/	Contract losses	3,990,436
	Sub-total	3,990,436
Otis Engineering	Decline in operating income	2,375,000
	Compensation paid to others	609,010
	Contract losses	2,011,422
	Loss of tangible property	367,624
	Bank accounts, securities and other intangibles	346,109
	Sub-total	5,709,165
Halliburton Limited 24/	Decline in operating income	1,708,000
	Compensation paid to others	1,026,791
	Loss of tangible property	8,887,752
	Bank accounts, securities and other intangibles	138,132
	Sub-total	11,760,675
	Total	35,602,413

287. As at 2 August 1990 the halliburton Claimants provided a broad range of services and products used in the exploration, development and production of oil and gas to energy sector clients throughout the Middle East.

288. More specifically, and as it relates to matters before the Commission, Halliburton Company provided well cementing, stimulation and water control services to customers in Saudi Arabia and in the Partitioned Neutral Zone between Saudi Arabia and Kuwait. Halliburton Geophysical Services, Inc. ("Halliburton Geophysical") provided geophysical expertise and equipment to customers in Saudi Arabia and Iraq. Halliburton Logging Services, Inc. ("Halliburton Logging") provided well logging services and

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equipment, including well logging trucks, to the Arab Well Logging Company ("AWLCO") of Iraq. Otis Engineering Corporation ("Otis Engineering") provided well completion and reworking services and equipment to customers in Kuwait, Iraq and Saudi Arabia.

289. Halliburton Limited operated in Kuwait providing a broad range of oil field services through unincorporated divisions mirroring the specialized Halliburton Claimants operating outside of Kuwait. So, for example, Halliburton Limited provided specialized services in Kuwait through its "Halliburton Logging Services" and "Otis Engineering" divisions.

290. As there is a significant similarity among the loss elements advanced by the Halliburton Claimants, these claims will be presented together and analysed in this report by loss type.

B. Declines in operating income

291. Three of the Halliburton Claimants (Halliburton Company, Otis Engineering and Halliburton Limited) advance claims for overall declines in operating income resulting from Iraq's unlawful invasion and occupation of Kuwait. In assessing these claims, and the evidence filed in support of these claims, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property, and the Panel has carefully considered issues of causation and mitigation.

1. Halliburton Company decline in operating income

292. Prior to Iraq's unlawful invasion and occupation of Kuwait, Halliburton Company provided well cementing, stimulation and water control services to the Saudi Arabian Oil Company ("Saudi Aramco") and to the Arabian Oil Company ("AOC"). These services were provided pursuant to general services contracts on a service ticket basis, whereby the customer would issue orders which would then be governed by the general services contracts.

293. Halliburton Company claims that it suffered a decline in business activity in Saudi Arabia and in the Partitioned Neutral Zone, after the invasion of Kuwait, as a result of the build-up of military forces and the threat of an imminent Iraqi invasion of Saudi Arabia. Halliburton Company also claims that business expenses in Saudi Arabia increased during the occupation of Kuwait, and that productivity decreased as a result of missile attacks and concerns by employees for their personal safety.

294. As a result, Halliburton Company claims that it suffered an operating income decline of US$1,071,000, composed of both a decrease in revenue and an increase in expenses. This figure was calculated by comparing monthly revenue and operating income averages for the 6 month period ending in June 1990 with the monthly revenue and operating income averages for the period August 1990 to the end of March 1991.

295. With the assistance of its consultants and the secretariat, the Panel has conducted an extensive review of Halliburton Company's claim that it suffered a decline in operating income. This review involved a detailed analysis of Halliburton Company's financial records, including its management accounts both before and after Iraq's unlawful invasion and occupation of Kuwait. The Panel also requested and reviewed Halliburton Company's service ticket register for the relevant period, and a sample of large supporting service tickets. Finally, the Panel reviewed the underlying service ticket contracts as well as affidavits provided by the Halliburton Claimants outlining the effects of the invasion on their businesses.

296. Based on the foregoing, the Panel is satisfied that Halliburton Company did suffer a decline in operating income for the period August 1990 through March 1991. The Panel quantifies this decline by comparing Halliburton Company's monthly operating income average for the 7 months ending July 1990 with the monthly operating income actually achieved for the period August 1990 to the end of March 1991. This leads to a total decline in operating income for Halliburton Company of US$1,051,000, and the Panel recommends that this amount be awarded to Halliburton Company.

2. Otis Engineering decline in operating income

297. Prior to Iraq's unlawful invasion and occupation of Kuwait, Otis Engineering provided well completion products and services to customers in Saudi Arabia, including the Saudi Arabian Oil Company ("Saudi Aramco") and the Arabian Oil Company ("AOC"). The majority of these services were provided on a service ticket basis, whereby the customer would issue orders which would then be governed by general services contracts .

298. Otis Engineering claims that it suffered a decline in business activity in Saudi Arabia and in the Partitioned Neutral Zone, after the invasion of Kuwait, as a result of the buildup of military forces and the threat of an imminent Iraqi invasion of Saudi Arabia. Otis Engineering also claims that business expenses in Saudi Arabia increased during the occupation of Kuwait, and that productivity decreased as a result of missile attacks and concerns by employees for their personal safety.

299. As a result, Otis Engineering claims that it suffered an operating income decline of US$2,375,000, composed of both a decrease in revenue and an increase in expenses. This figure was calculated by comparing monthly

revenue and operating income averages for the 6 month period ending in June 1990 with the monthly revenue and operating income averages for the period July 1990 to the end of February 1991.

300. With the assistance of its consultants and the secretariat, the Panel has conducted an extensive review of Otis Engineering's claim that it suffered a decline in operating income. This review involved a detailed analysis of Otis Engineering's financial records, including management account summaries. Otis Engineering has advised the Panel that a number of the source accounting documents (the expense statements) for the management account summaries are missing pre-1992. The Panel also requested and reviewed Otis Engineering's service ticket register for the relevant period, and a sample of large supporting service tickets. Finally, the Panel reviewed the underlying general services contracts as well as affidavits provided by the Halliburton Claimants outlining the effects of Iraq's unlawful invasion and occupation of Kuwait on their businesses.

301. The Panel was not able to verify from the records provided the fact or amount of Otis Engineering's decline in operating income in Saudi Arabia. Specifically, the pre-1992 expense statements of this claimant could not be located. Further, the Panel's consultants were only able to match 67 per cent of the service tickets reviewed as against Otis Engineering's own service ticket register. As the management account summaries are based at least partially on expense statements which are missing, and as the service ticket register could not be matched with a sufficient degree of confidence with its primary documents (the service tickets themselves), the Panel has serious concerns about both the revenue and expense aspects of Otis Engineering's claim that it suffered a decline in operating income. As such, this element of the claim must fail on evidentiary grounds.

302. As the Panel is not recommending an overall award for a decline in operating income for Otis Engineering, it is making a recommendation for an award to compensate Otis Engineering for specific proved extraordinary expenses that formed a part of that claimed decline in operating income (see paras. 319-320, *infra*).

3. Halliburton Limited decline in operating income

303. Halliburton Limited has advanced a claim for a decline in operating income, in this case based on the complete cessation of its business in Kuwait during its occupation, in the amount of US$1,708,000. Halliburton Limited had also worked primarily on a service ticket basis for its principal customers KOC and the Joint Operations in the Partitioned Neutral Zone between Kuwait and Saudi Arabia. As noted above, Halliburton Limited performed a wide range of oilfield service work in Kuwait, operating through unincorporated divisions which mirrored the more specialized Halliburton companies which operated primarily outside Kuwait.

304. The Halliburton Limited claim for loss of operating income was calculated by comparing, for each of its unincorporated divisions, the revenue and operating income figures for the 6 month period ending June 1990 with the period starting August 1990 and ending when pre-invasion profitability levels were again achieved (between April and August 1991).

305. With the assistance of its consultants and the secretariat, the Panel has conducted an extensive review of Halliburton Limited's claim based on a loss of operating income. This review involved a detailed analysis of Halliburton Limited's financial records, including divisional management accounts. The Panel also reviewed the contract documents between Halliburton Limited and its customers KOC and the Joint Operations.

306. The Panel has quantified Halliburton Limited's loss of operating income as a result of Iraq's unlawful invasion and occupation of Kuwait by comparing Halliburton Limited's monthly operating income average for the 7 months ending July 1990 with the monthly operating income achieved between August 1990 and when divisional pre-invasion profitability levels were again achieved (between April and August 1991). This leads to a total decline in operating income for Halliburton Limited of US$965,286, and the Panel recommends that this amount be awarded to Halliburton Limited.

4. Causation and mitigation

307. The Panel has recommended awards for operating income declines for Halliburton Company and Halliburton Limited. In doing so, the Panel specifically finds that these losses resulted directly from Iraq's unlawful invasion and occupation of Kuwait. In the case of Halliburton Company, this finding is based on a review of the underlying service tickets. This review has satisfied the Panel that the declines in operating income occurred in the Partitioned Neutral Zone and in nearby areas of Saudi Arabia directly affected by military activities. In the case of Halliburton Limited, the decline in operating income was suffered in Kuwait as a result of the complete cessation of the claimant's business.

308. The Panel has also determined that the declines in operating income suffered by Halliburton Company and Halliburton Limited do not simply represent work that was deferred as a result of Iraq's unlawful invasion and occupation of Kuwait; rather this work was lost to these claimants and this loss led to a compensable decline in operating income.

309. The Panel has noted that both Halliburton Company and Halliburton Limited quickly returned to pre-invasion profitability levels after the liberation of Kuwait, and that they then earned profits significantly exceeding the pre-invasion profit levels of those claimants.

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310. The Panel has not offset any of these post-liberation profits against the losses suffered by Halliburton Company and Halliburton Limited because the Panel has determined that these unusual profit levels were earned as a result of increased business activity associated with the reconstruction of Kuwait and the larger than normal volumes of oil produced by Saudi Arabia during this period of time and not of an increase in or a return in volume or profitability of the pre-invasion core business activities of Halliburton Company and Halliburton Limited in Kuwait and Saudi Arabia; rather, the post-liberation work undertaken by these claimants was substantially different in type and quantity from their pre-invasion activities.

311. In coming to this conclusion, the Panel notes that the pre-invasion activity of Halliburton Company and Halliburton Limited in these countries was the routine provision of services associated with the orderly production of oil in predictable quantities from a well established oil field infrastructure.

312. By contrast, the Panel finds that in the post-liberation period in Kuwait and Saudi Arabia there existed a unique and temporary economic opportunity to provide highly specialized oil field services and supplies. Halliburton Company and Halliburton Limited (or their successors) sought and obtained contracts arising from this economic opportunity, as did many oil field supply and service companies from around the world, including companies that had previously conducted little or no work in the Persian Gulf. The Panel has concluded that it would be incorrect to set-off profits associated with the exploitation of this unique and temporary economic opportunity as against losses suffered during the occupation of Kuwait, as those losses resulted from a decline in work of an essentially different nature from the work undertaken by these claimants in the post-liberation period.

313. In short, a reduction in any award to Halliburton Company and Halliburton Limited based on post-liberation profits would, on the specific facts of those cases, be a finding that profits earned from an essentially new enterprise providing new products and services to the Kuwaiti and Saudi Arabian markets should be offset against losses suffered in the claimants' traditional fields of work. The Panel notes that such a finding would not be in keeping with traditional principles of mitigation.

314. The Panel specifically finds that its recommendations must:

> "... as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would in all probability, have existed if that act had not been committed." 25/

In this case, the consequences of Iraq's unlawful invasion and occupation of Kuwait on the Halliburton Claimants would not be eliminated by a recommendation which included a deduction from the claim based on revenue earned in a purely collateral way, largely from the deployment of capital not previously in the region, and in an essentially new enterprise. The Panel also specifically finds that the Halliburton Claimants will not be unjustly enriched by the Panel's recommendations for the reasons outlined above, and as the post-liberation income was earned based on large volumes of work and not on unusual profit margins. 26/ The Panel finds that this income was in no way a windfall to the Halliburton claimants.

C. Compensation paid to others

315. All of the Halliburton Claimants, with the exception of Halliburton Logging, claim that they incurred additional payroll and related expenses as a result of Iraq's unlawful invasion and occupation of Kuwait. More specifically, these Halliburton claimants state that they paid "Scud bonuses" and hardship pay to their employees throughout the region of the conflict, and that they incurred additional airfares, travel expenses for evacuated employees and other costs. These Halliburton claimants state that these payments and hardship expenses were necessary to compensate their employees for the increased hazards of working in a war zone. Each of these claims will be considered in turn.

1. Halliburton Company - compensation paid to others

316. Halliburton Company claims that it paid to its employees US$383,549 in war zone payments and for temporary living arrangements and travel, all as a result of Iraq's unlawful invasion and occupation of Kuwait. This claim is supported by a significant volume of payroll information, and by an external audit of Halliburton Company's extraordinary expenses.

317. In response to a request from the secretariat, Halliburton Company has confirmed that these extraordinary expenses were in fact charged as expenses against the earnings of this claimant. Accordingly, these expenses reduced Halliburton Company's actual monthly profit, and increased Halliburton Company's claim for a decline in operating income. The Panel has recommended that the claimant be compensated for this decline in operating income (see para. 296, *supra*). Accordingly, the Panel recommends no compensation for Halliburton Company's war zone payments and related costs, as an award for this element of the claim would result in over-compensation to this claimant.

2. Halliburton Geophysical - compensation paid to others

318. Halliburton Geophysical claims that it paid to its employees US$315,613 in war zone payments as a result of Iraq's unlawful invasion and occupation of Kuwait. This claim is supported by a significant volume of payroll information and reconciliation schedules, from which the Panel was able to verify this expenditure. The Panel accordingly finds that the

claimant has proved extraordinary expenses of US$315,613, and that these expenses are compensable as they resulted directly from Iraq's unlawful invasion and occupation of Kuwait. The Panel accordingly recommends an award of US$315,613 to Halliburton Geophysical.

3. Otis Engineering - compensation paid to others

319. Otis Engineering claims that it paid to its employees US$513,260 in war zone payments, and for temporary living arrangements and travel, all as a result of Iraq's unlawful invasion and occupation of Kuwait. The Panel has reviewed a significant volume of supporting payroll information, and an external audit report dealing with these extraordinary expenses, which report concludes that Otis Engineering incurred US$369,463 in extraordinary war zone payments, temporary living and travel expenses. The Panel finds that these extraordinary expenses were caused directly by the Iraqi invasion and occupation of Kuwait, and recommends an award of US$369,463 based on the external audit of this element of the claim.

320. In addition, Otis Engineering states that it paid compensation to its employees in Kuwait for belongings either looted or destroyed by Iraqi forces. Otis Engineering claims US$95,750 for this loss element. In support of its claim Otis Engineering provided copies of the cheques it issued to its employees. The Panel finds that this portion of the claim has been proved and is compensable in full, and accordingly recommends an award of US$95,750.

4. Halliburton Limited - compensation paid to others

321. Halliburton Limited claims that it paid to its employees US$474,771 in war zone payments, and for temporary living arrangements and travel, all as a result of Iraq's unlawful invasion and occupation of Kuwait. This claim is not supported by primary and contemporaneous accounting or payment documentation, which should be available to the claimant. The Panel notes that these payments were generated from outside Kuwait, and the supporting documents were not therefore destroyed or lost as a result of the Iraqi invasion and occupation of Kuwait. Halliburton Limited states that its primary supporting documentation was lost. In any event, the Panel finds that this element of the claim is not adequately supported by contemporaneous documentation. Accordingly, Halliburton Limited's claim for war zone payments must fail on evidentiary grounds, and the Panel recommends no compensation for this loss element.

322. In addition, Halliburton Limited states that it paid compensation to its employees in Kuwait for belongings either looted or destroyed by Iraqi forces. Halliburton Limited claims US$552,020 for this loss element. In support of its claim Halliburton Limited provided to the Commission accounting records with respect to its payments to employees, along with inventories of lost belongings. The Panel finds that Halliburton Limited

has proved that these extraordinary expenses were incurred by it as a result of Iraq's unlawful invasion and occupation of Kuwait. The Panel is satisfied that payment to Halliburton Limited for this claim will not result in over-compensation notwithstanding the fact that the Panel has recommended compensation to Halliburton Limited for an overall decline in operating income (see paras. 303-306, supra). Halliburton Limited has satisfied the Panel that these extraordinary expenses were charged to a special Middle East contingency reserve fund, and are accordingly not reflected in the operating income statements that form the basis of the claim for a decline in operating income. Accordingly the Panel finds this portion of the claim to be compensable in full, and recommends an award of US$552,020.

D. Contract losses

323. Halliburton Geophysical, Halliburton Logging and Otis Engineering all advance claims for specific contract losses arising from Iraq's unlawful invasion and occupation of Kuwait.

1. Halliburton Geophysical contract losses

(a) Seismic Agreement - supply of equipment

324. Halliburton Geophysical entered into a contract for the provision of equipment and services (the "Seismic Agreement") with Iraq Oil Exploration Company ("IOEC") in November 1989. Pursuant to the Seismic Agreement, Halliburton Geophysical agreed to supply the vehicles, equipment, accessories, spare parts and software packages necessary for the IOEC to conduct three dimensional seismic surveys for oil exploration purposes. The obligation to supply spare parts was for a period of 2 years after the termination of Halliburton Geophysical's field operations obligations.

325. The Seismic Agreement included a financing arrangement which governed the terms of payment. The financing agreement required IOEC to make a substantial down payment, and to open a letter of credit for the payment of the balance in three equal semi-annual instalments commencing on 20 November 1991 and ending on 20 November 1992. IOEC made the necessary down payment, and Halliburton Geophysical claims an outstanding balance of US$9,916,858. As the letter of credit was issued by the Central Bank of Iraq and was unconfirmed, Halliburton Geophysical claims that this balance was unpaid as a result of Iraq's unlawful invasion and occupation of Kuwait.

326. The Panel's first task is to determine whether the unpaid balance under the Seismic Agreement is within the jurisdiction of the Commission. Because the Seismic Agreement is a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an

obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

327. The Panel finds that the amounts outstanding from IOEC to Halliburton Geophysical are debts of Iraq within the meaning of Security Council resolution 687 (1991).

328. The Panel has carefully examined the Seismic Agreement, the financing agreement, and the letter of credit documentation. The Panel finds that Halliburton Geophysical undertook a single indivisible contractual obligation to provide a defined package of equipment and accessories, and that there was no provision for partial payment based on any partial performance by Halliburton. On the contrary, IOEC's payment obligation (apart from the down payment) arose only on delivery of the complete package of equipment and accessories.

329. The Panel further finds that Halliburton Geophysical shipped the subject equipment and accessories in numerous lots starting in March 1990 and ending on 30 July 1990. The Panel must determine when the debt for these shipments arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

330. As Halliburton Geophysical undertook a single indivisible contractual obligation, with no provision for payment for anything less than delivery of the complete package, the Panel finds that Halliburton Geophysical did not perform its contractual obligations until the last shipment was made. 27/ Accordingly, and as the last shipment was made (by air) on 30 July 1990, the Panel finds that IOEC's debt arose after 2 August 1990 within the meaning of Security Council resolution 687 (1991). As a result, this claim is within the jurisdiction of the Commission.

331. The Panel further finds that IOEC failed to pay the balance due under the Seismic Agreement, in the amount of US$9,916,858, as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

332. As noted by Halliburton Geophysical, the Panel finds that it is appropriate to deduct from this claim the amount of US$103,870 as a credit to IOEC for a shipment of cables that was not delivered. Accordingly, the Panel recommends an award for this loss element in the amount of US$9,812,988.

333. Halliburton Geophysical claims that it suffered other losses related to the Seismic Agreement as a result of Iraq's unlawful invasion and occupation of Kuwait. Specifically, Halliburton Geophysical claims that it pre-paid freight and shipping charges in the amount of US$648,927 as an accommodation to IOEC. The Panel finds that these payments were made by Halliburton Geophysical, and were due to be repaid by IOEC on the same

terms as the amounts due for equipment and services, that is in 3 equal semi-annual instalments commencing on 20 November 1991 and ending on 20 November 1992. As such, and for the same reasons that the Panel has recommended an award for the outstanding balance for equipment and services, the Panel also recommends an award of US$648,927 for these pre-paid freight and shipping costs.

334. In summary, the Panel recommends compensation to Halliburton Geophysical for losses under the Seismic Agreement, with respect to the supply of equipment, in the amount of US$10,461,915.

(b) Seismic Agreement - field training

335. Further, the Seismic Agreement called for Halliburton Geophysical to provide field training in the use of seismic equipment for six months, and Halliburton Geophysical claims losses of US$1,613,333 for this item. The Panel finds that Halliburton Geophysical mobilized its personnel to fulfill this contractual obligation in June 1990, and the Panel further finds that Halliburton Geophysical's personnel continued to work after Iraq's unlawful invasion and occupation of Kuwait under threat from Iraqi forces, and that these employees were prohibited from leaving Iraq until the training was completed.

336. The field training portion of the Seismic Agreement called for six monthly payments of US$201,667, and for six monthly payments of the Iraqi Dinar equivalent of US$201,667. Halliburton Geophysical received no United States dollar payments, and only four payments for the Iraqi dinar equivalent of US$201,667 each. Accordingly, the Panel finds that Halliburton Geophysical is entitled to an award of US$1,209,999, for the United States dollar payments. The Panel notes that at all relevant times the Iraqi dinar was non-transferable and non-exchangeable. 28/ The Panel further notes that Halliburton Geophysical incurred Iraqi dinar expenses in order to satisfy its obligations under the Seismic Agreement. The Panel notes that Halliburton Geophysical has provided no evidence to the Commission that it incurred Iraqi dinar expenses in excess of the Iraqi dinar payments it actually received from IOEC. In the circumstances, and because the Iraqi dinar was non-transferable and non-exchangeable, Halliburton Geophysical has not proved any loss arising from IOEC's failure to make two Iraqi dinar payments under the Seismic Agreement for field training.

337. In summary, the Panel recommends an award of US$1,209,999 to Halliburton Geophysical for the failure of IOEC to make United States dollar payments for field training under the Seismic Agreement.

(c) Seismic Agreement - one-time moving/training fees

338. Further, the Seismic Agreement provided for a one-time moving fee to cover administrative and travel costs, in the amount of US$91,000, which was not paid, and a one-time training fee of US$129,000, which was also not paid. This training fee was for technical training, and was separate from the field training discussed above. Both the moving fee and the training fee were to be paid after the handover of the equipment to IOEC, at the conclusion of the training period. The Panel finds that these fees were not paid as a direct result of Iraq's unlawful invasion and occupation of Kuwait, and that they are compensable. Accordingly, the Panel recommends compensation in the total amount of US$220,000 for these items.

(d) Seismic Agreement - loss of profits

339. Finally, Halliburton Geophysical claims for lost profits based on the anticipated sale of spare parts under the Seismic Agreement for the 2 year contract period. Halliburton claims US$76,727 based on actual performance under a "comparable" contract with another customer in Oman. The Panel notes that there is no past sales history with IOEC which can be used to value a loss of profits claim. The Panel notes as well that Halliburton Geophysical has compared sales for 2.5 years in Oman with a contractual obligation to supply spare parts for 2 years in the case of IOEC. The Panel also notes that the Omani contract was substantially larger than the IOEC project. The Panel finds that Halliburton Geophysical has not proved the volume of spare parts that would have been supplied to IOEC, or the margin of profit that it would have earned on that volume. As such, this loss of profits claim is too speculative to be compensable, and the Panel recommends accordingly that no compensation be awarded for this loss element.

2. Halliburton Logging contract losses

(a) Purchase Agreement - new equipment

340. On 9 January 1990, Halliburton Logging signed a Purchase Agreement with AWLCO pursuant to which it agreed to supply two well logging trucks and spare parts. Some prepaid goods were shipped under this agreement, leaving unpaid freight charges of US$25,294. Halliburton Logging claims that the majority of the equipment under this agreement was not shipped as at 2 August 1990, and that this equipment was then largely resold. For the goods that were resold, Halliburton Logging claims its loss of profit on the AWLCO sale, on the theory that but for Iraq's unlawful invasion and occupation of Kuwait it would have had both sales. For the goods that were not resold, Halliburton Logging claims its cost of production plus its loss of profit on the AWLCO sale. In both cases, the loss of profits is calculated based on an estimated profit margin of 47 per cent. On these bases, Halliburton claims a loss of profit under the Purchase Agreement of

US$1,305,215. The Panel notes that this figure is based on a calculation that starts with the original contract price, and provides appropriate credits for various payments received.

341. The Panel has examined the Purchase Agreement with AWLCO, the relevant shipping documents, and Halliburton Logging's management accounts. The Panel finds that Halliburton Logging suffered a loss under the Purchase Agreement as a result of the unlawful invasion and occupation of Kuwait, and that its method for calculating that loss is generally acceptable. The Panel finds support for an overall 47 per cent profit margin in Halliburton Logging's management accounts. However, the evidence does not support the application of that margin to this particular contract loss. With the assistance of its consultants, and from a review of this claimant's accounting records, the Panel has determined that Halliburton Logging's margin on this contract would not have been less than 20 per cent. On that basis, and otherwise using the same method for calculating the loss as used by Halliburton Logging, the Panel has valued this loss at US$353,148. In addition, the Panel agrees that Halliburton Logging should be compensated for the US$25,294 in unpaid freight charges.

342. In summary, the Panel recommends compensation in the amount of US$353,148 for losses suffered by Halliburton Logging under the Purchase Agreement, plus US$25,294 in unpaid freight charges.

(b) Contract - used equipment

343. On 10 November 1989 Halliburton Logging signed a contract for the sale of used logging equipment, plus parts and assistance, with AWLCO. Halliburton Logging claims that the majority of this used equipment was shipped, and that the unshipped equipment was resold. Halliburton Logging claims for its loss of profit on the unshipped equipment, in the amount of US$4,523, again on the theory that but for Iraq's unlawful invasion and occupation of Kuwait it would have had both sales. While AWLCO did make a down payment for the used equipment, and additional payments for extras, Halliburton Logging claims for the unpaid balance owing on equipment shipped prior to the invasion, in the amount of US$508,205.

344. The Panel has examined the contract for the sale of used logging equipment, as amended, and the shipping documents. In addition, the Panel reviewed bank transfers with respect to the payments made by AWLCO. The Panel finds that Halliburton Logging suffered losses under the contract for the sale of used logging equipment as a result of the unlawful invasion and occupation of Kuwait.

345. Specifically, Halliburton Logging lost the profit it would have earned on the unshipped equipment. Halliburton Logging has calculated that loss based on an anticipated margin of 47 per cent. As noted above, the Panel finds support for an overall 47 per cent profit margin in Halliburton

Logging's management accounts. However, the evidence does not support the application of that margin to this particular contract loss. With the assistance of its consultants, and noting that refurbished used equipment often obtains a somewhat higher margin than new equipment in the oil field supply sector, and from a review of this claimant's accounting records, the Panel has determined that Halliburton Logging's margin on this contract would not have been less than 25 per cent. On that basis, the Panel has valued this loss at US$2,405.

346. In addition, the Panel finds that Halliburton Logging suffered a loss of the unpaid balance on the used equipment that it shipped to AWLCO. For this portion of the claim, the Panel's first task is to determine whether the loss is within the jurisdiction of the Commission. Because the shipment of used equipment arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

347. The Panel finds that the unpaid balance for the used equipment is a debt of Iraq within the meaning of Security Council resolution 687 (1991).

348. The Panel further finds that Halliburton Logging shipped the used equipment in multiple instalments both before and after 2 May 1990. The Panel must determine when the debt for these shipments arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

349. The Panel finds that Halliburton Logging undertook a single indivisible contractual obligation to provide a defined package of equipment and accessories, and that there was no provision for partial payment of the balance based on any partial performance by Halliburton Logging. On the contrary, AWLCO's final payment obligation arose only on delivery of the complete package of used equipment.

350. As Halliburton Logging undertook a single indivisible contractual obligation, with no provision for payment of the final amount for anything less than the complete package, the Panel finds that Halliburton Logging could not have performed its contractual obligation until the last shipment was made. 29/ Accordingly, and as Halliburton Logging made shipments after 2 May 1990, and as the completion of the contract by Halliburton Logging was rendered impossible by Iraq's unlawful invasion and occupation of Kuwait, the Panel finds that AWLCO's debt arose after 2 August 1990 within the meaning of Security Council resolution 687 (1991). As a result, this claim is within the jurisdiction of the Commission.

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351. The Panel further finds that AWLCO failed to pay the balance due, in the amount of US$508,205.00, as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

352. As a result, the Panel recommends compensation to Halliburton Logging for loss of profit on unshipped used equipment in the amount of US$2,405. The Panel further recommends compensation to Halliburton Logging for the unpaid balance on used equipment shipped to AWLCO in the amount of US$508,205.

(c) Technical support contract

353. On 19 September 1982, Halliburton Logging signed a technical support contract with AWLCO, with a term of 10 years. Under this contract Halliburton Logging provided a technical adviser in Iraq. Halliburton Logging claims that this technical adviser left Iraq as a result of its unlawful invasion and occupation of Kuwait, with 25 months left under the technical support agreement. Halliburton Logging claims its loss of profits under this agreement in the amount of US$101,625.

354. The Panel has reviewed the technical support contract, and the Panel requested and reviewed details of the costs of Halliburton Logging for supplying this technical adviser. The Panel is satisfied that Halliburton Logging lost US$3,565 per month in net profit, for the remaining 25 months of the contract, because of Iraq's unlawful invasion and occupation of Kuwait. Accordingly, the Panel recommends compensation of US$89,125. This figure differs from the claim amount by US$500 per month for the balance of the contract, as the evidence shows that Halliburton Logging's monthly charge-out rate to AWLCO was overstated in the claim by that amount. The discrepancy relates to a monthly payment of Iraqi dinar agreed by the parties, which was intended purely to cover local expenses. As these local expenses were not incurred, the Panel has disregarded the Iraqi dinar amounts in assessing the loss of profits claim.

(d) Spare parts - accounts receivable

355. Halliburton Logging also claims losses arising from its obligation to supply spare parts to AWLCO under the agreements described above and pursuant to a 1982 agreement under which Halliburton Logging was committed to supply spare parts and related materials needed to maintain and update the customer's logging equipment for 10 years.

356. In practice, spare parts were supplied by Halliburton Logging to AWLCO on a service ticket basis as required by the customer. This contrasts with Halliburton Logging's sale of used equipment (see paras. 343-352, supra); in the case of spare parts, Halliburton Logging undertook numerous contractual obligations with numerous payment dates. In the case of the used equipment, Halliburton Logging undertook a single indivisible

contractual obligation with the expectation of receiving final payment on completion of its performance obligation.

357. Halliburton Logging claims unpaid accounts receivable for spare parts in the amount of US$219,146.

358. The Panel's first task is to determine whether the unpaid accounts receivable are within the jurisdiction of the Commission. Because these accounts receivable arose from a contractual obligation created prior to Iraq's unlawful invasion and occupation of Kuwait, the Panel must determine, as a threshold matter, (1) whether the claim is a debt or an obligation of Iraq and (2) whether it falls within the meaning of the "arising prior to 2 August 1990" limitation imposed by paragraph 16 of Security Council resolution 687 (1991).

359. The Panel finds that the accounts receivable for spare parts which were unpaid by AWLCO are a debt of Iraq within the meaning of Security Council resolution 687 (1991).

360. Next, the Panel must determine when this debt arose, and specifically whether the debt arose prior to 2 August 1990, as discussed in section II.C., supra.

361. The Panel finds that Halliburton Logging made 11 shipments of spare parts to AWLCO after 2 May 1990. The Panel finds that these 11 shipments, worth US$106,079, represent performance by Halliburton Logging creating a debt or obligation of Iraq that arose after 2 August 1990 within the meaning of paragraph 16 of Security Council resolution 687 (1991). As a result, the claim based on these 11 shipments, for a total amount of US$106,079, is within the jurisdiction of the Commission. In coming to this decision, the Panel has disregarded three supporting invoices, for a total amount of US$25,803, which are not for spare parts and therefore do not relate to this loss element.

362. The Panel further finds that AWLCO failed to pay for these 11 shipments, in the total amount of US$106,079, as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

363. The Panel finds that the balance claimed by Halliburton Logging for spare parts shipped to AWLCO, in the amount of US$87,264, relates to multiple shipments made prior to 2 May 1990. The Panel finds that these shipments, worth US$87,264, represent performance by Halliburton Logging creating a debt or obligation of Iraq that arose prior to 2 August 1990 within the meaning of paragraph 16 of Security Council resolution 687 (1991). As a result, the claim based on these shipments is outside the jurisdiction of the Commission.

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364. As a result, the Panel recommends compensation to Halliburton Logging for accounts receivable for spare parts in the amount of US$106,079. The remainder of Halliburton Logging's claim for accounts receivable for spare parts is outside the jurisdiction of the Commission.

(e) Spare parts - outstanding orders

365. Halliburton Logging also claims that it had manufactured but not yet shipped certain spare parts that could not be resold, and so Halliburton Logging seeks the full purchase price of these parts in the amount of US$17,896. For spare parts that were ordered but not shipped, and which were subsequently resold, Halliburton Logging claims its loss of profit on the AWLCO orders in the amount of US$408,532 again on the basis that but for Iraq's unlawful invasion and occupation of Kuwait it would have had both sales.

366. The Panel has reviewed the underlying purchase orders and quotations with respect to these spare parts. The Panel is satisfied from these primary documents that Halliburton Logging had orders and quotations totalling US$945,550 outstanding at the time, including the orders that Halliburton Logging claims it was unable to resell. From this amount the Panel has subtracted quotations with a value of US$73,203, as these were quotations that had not advanced to the purchase order state. The Panel has further excluded US$60,655 in "stale" orders, where the Panel is not satisfied that the orders were still active because of the length of time that had elapsed. This leaves a total volume of current orders, where the spare parts were manufactured but not shipped, of US$811,692. Halliburton Logging seeks compensation based on a profit margin of 47 per cent. The Panel has noted above that this margin is supported by Halliburton Logging's financial records, and on the advice of its expert consultants, the Panel is satisfied that this was the margin that would have been earned on spare parts sales to AWLCO at the relevant time. As such, the Panel values this loss element at US$381,495. In making this finding, the Panel accepts that Halliburton Logging would have had both the sales to AWLCO and the subsequent resales, were it not for Iraq's unlawful invasion and occupation of Kuwait. The Panel is not prepared to recommend an award in excess of this profit margin for the orders that Halliburton Logging claims it was unable to resell, as Halliburton Logging has not proved that it was unable to resell the subject orders.

(f) Spare parts - loss of profits

367. Finally, Halliburton Logging claims US$1,400,000 for loss of profits on the basis that Iraq's unlawful invasion and occupation of Kuwait prevented it from continuing with its service ticket supply of spare parts to AWLCO. In support of this loss element, Halliburton Logging has provided to the Commission an affidavit with respect to anticipated sales volumes and profit margins. The Panel finds that this loss element of the

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claim is not proved. Specifically, Halliburton Logging has not provided evidence sufficient to establish the anticipated volume of sales or the anticipated future profit margin.

368. Accordingly, the Panel recommends no compensation for Halliburton Logging's claim for loss of profits on its anticipated spare parts sale.

3. Otis Engineering contract losses

369. Prior to 2 August 1990, Otis Engineering sold specialized equipment in Kuwait through the Gas and Oil Field Service Company ("GOFSCO"), its agent in Kuwait. Otis Engineering also sold directly to the Iraqi National Oil Company ("INOC") on a service ticket basis. Otis Engineering claims that it lost profits on sales to GOFSCO and to INOC as a result of Iraq's unlawful invasion and occupation of Kuwait.

370. More specifically, Otis Engineering claims the full sales price for undelivered equipment ordered by GOFSCO and INOC, and specially manufactured for those customers, in the amount of US$579,271. Otis Engineering claims that it was unable to resell this equipment, and so the full sale price is the proper measure of the loss. In support of this claim Otis Engineering has provided to the Commission the underlying purchase orders, as well as an affidavit from a responsible employee attesting to the specially manufactured nature of these goods.

371. The Panel specifically requested that Otis Engineering provide documentary evidence that this equipment was manufactured, and documentation demonstrating all of the claimant's efforts to mitigate its losses by reselling. Otis Engineering has not provided documentary evidence responsive to these requests, and accordingly the Panel finds that this element of the claim must fail on evidentiary grounds.

372. In addition, Otis Engineering claims lost profits on an order placed by INOC for special equipment that had not yet been manufactured in the amount of US$621,847. This order was subject to a letter of credit being placed by INOC for the purchase price. Otis Engineering has provided the Commission with the quotation and purchase order, and with an affidavit from a responsible employee outlining the costs and expected profits associated with this order.

373. The Panel has reviewed the documents supporting this loss element and has noted that the underlying quotation was in May 1989, and was confirmed by telex in March 1990. However, the required letter of credit does not appear to ever have been posted by INOC. The Panel is not satisfied that the cancellation of this order was a direct result of Iraq's unlawful invasion and occupation of Kuwait; rather it appears that this order did not proceed because of the customer's failure to provide a letter of credit

in the months following March 1990. Accordingly the Panel recommends no compensation for this loss element.

374. Otis Engineering claims also for contract losses with respect to two Kuwaiti orders for equipment that were affected by Iraq's unlawful invasion and occupation of Kuwait. Specifically, GOFSCO had placed an order for equipment with a value of US$423,526. This order was delayed, and was not completed until 23 March 1992. Otis Engineering claims US$36,705 for the delay in completion of this order.

375. The Panel notes that the claim with respect to this delayed order is essentially an interest claim, which has been calculated by reference to prevailing interest rates. The Panel notes that Otis Engineering has not provided any evidence that it incurred additional financing costs as a result of the delay in receipt of these profits, or that the proposed rate of interest corresponds to this claimant's actual financing costs. As such, this element of the claim must fail on evidentiary grounds. The Panel makes no findings on whether Otis' interest claim would have been compensable if it had been adequately proven.

376. Finally, Otis Engineering states that it had won a bid to supply subsurface safety equipment to the Kuwaiti Ministry of Oil, which order was cancelled as a result of Iraq's unlawful invasion and occupation of Kuwait. Otis Engineering claims loss of profits on this lost contract in the amount of US$773,599. In support of this claim the claimant has provided the tender documents relevant to Otis Engineering's bid, an affidavit from a responsible employee of the claimant stating that this bid was accepted, and an internal profit calculation sheet. The Panel finds based on the evidence presented that this bid had not proceeded to the point where a firm contractual commitment was in place. Accordingly, this element of the claim cannot succeed as the loss claimed is speculative.

377. In summary, the Panel recommends no compensation for Otis Engineering's contract loss claims.

E. Loss of tangible property

378. Halliburton Limited and Otis Engineering both maintained offices and operations centres in Kuwait prior to 2 August 1990, and they both claim for loss of tangible property which they say was destroyed or looted by Iraqi forces.

1. Halliburton Limited loss of tangible property

379. More specifically, Halliburton Limited claims US$7,549,987 for the loss of "almost all" its depreciable assets in Kuwait, such as trucks, pumps and miscellaneous equipment destroyed or looted as a result of Iraq's unlawful invasion and occupation of Kuwait. Halliburton Limited quantified

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this claim by reference to its actual replacement cost, as Halliburton Limited brought new equipment into Kuwait after the occupation of that country ended. Accordingly, Halliburton Limited claims that this figure, which is the net book value of the replacement assets, represents the depreciated replacement value of its lost depreciable assets. In support of this claim Halliburton Limited initially provided copies of its post liberation fixed asset register showing replacement assets only.

380. In response to a question from the secretariat, Halliburton Limited provided a fixed asset register for 31 July 1990, showing both the original cost and the accumulated depreciation for the lost depreciable assets. With the assistance of its consultants, the Panel has taken the net book value of the assets as at 31 July 1990, and to this figure added a minimum amount of 10 per cent of the original purchase cost for fully depreciated assets. This leads to an asset value of US$545,487. As Halliburton Limited lost "almost all" of its depreciable assets as a result of Iraq's unlawful invasion and occupation of Kuwait, the Panel finds that 90 per cent of this asset value so calculated represents Halliburton Limited's lost depreciable assets. Accordingly, the Panel values this loss at US$490,938.

381. In addition, Halliburton Limited claims US$498,275 for an inventory of sales materials, spare parts and similar items. Halliburton Limited argues that this inventory should be valued at its cost, without deduction for depreciation, as these items were all held for resale. In support of this claim Halliburton Limited has provided to the Commission detailed accounting records showing its inventory as at 31 August 1990. The Panel finds that Halliburton Limited has proved its cost for inventory items, and that these inventory items were lost as a result of Iraq's unlawful invasion and occupation of Kuwait. As these items were held for resale, the Panel finds that Halliburton Limited's loss is equal to its cost for these items, in the amount of US$498,275.

382. Halliburton Limited also claims that certain items, which were expensed at purchase and therefore not depreciated, were looted or destroyed by Iraqi forces. As these items were expensed, they were not maintained on Halliburton Limited's asset register. Halliburton Limited claims US$789,279 for these items based on Halliburton Limited's estimate of their "approximate net worth" at the time of the Iraqi invasion. In support of this claim Halliburton Limited has provided a subsequently prepared list of these items with their approximate values. Halliburton Limited has not provided any contemporaneous documentation reflecting the value of these expensed items, or from which Halliburton Limited's claim can be verified. Accordingly, this element of the claim must fail on evidentiary grounds.

383. Finally, Halliburton Limited claims that it incurred US$50,211 in expenses in reconditioning eight pieces of equipment that were damaged, but not destroyed, by Iraqi forces. This claim is supported by a subsequently

prepared chart of labour and parts associated with returning these units to service. Halliburton Limited has not provided any contemporaneous documentation reflecting its costs or expenses associated with reconditioning this equipment, or from which these costs or expenses can be verified. Accordingly, this element of the claim must fail on evidentiary grounds.

2. Otis Engineering loss of tangible property

384. Otis Engineering maintained a presence in Kuwait to enable Halliburton Limited to meet its obligations to KOC. Otis Engineering claims that its depreciable assets in Kuwait were destroyed as a result of Iraq's unlawful invasion and occupation of Kuwait. Otis Engineering claims US$89,333 for this loss, which was calculated by reference to its actual replacement cost just as Halliburton Limited valued its loss of depreciable assets. In support of this claim Otis Engineering provided a post-liberation fixed asset register showing replacement assets only.

385. The secretariat requested and received from Otis Engineering a fixed asset ledger as of 31 July 1990, showing the original cost and depreciated value of these assets. With the assistance of its consultants, the Panel has taken the net book value of the assets as at 31 July 1990, and to this figure added a minimum value of 10 per cent of the original purchase cost for those assets depreciated to less than that value. This leads to an asset value of US$83,798, and the Panel recommends compensation for this loss in that amount.

386. In addition, Otis Engineering claims US$112,784 for a lost inventory of sales materials, spare parts and similar items. As with the Halliburton Limited claim, Otis Engineering has valued this claim based on its cost, as all of these items were held for resale. In support of this claim Otis Engineering has provided a list showing the lost inventory, bearing the date "1990" without further detail. Otis Engineering was unable to provide further information to the Panel, such as acquisition and disposal information, the precise date of the document supporting this claim, or details of the nature of this inventory. Accordingly, Otis has failed to prove this element of the claim.

387. Finally, Otis Engineering claims US$165,507 for certain lost items that were expensed at the time of purchase and therefore not depreciated. Otis Engineering's claim is based on the approximate fair market value of these items, supported by a subsequently prepared list of the items with their approximate values. Otis Engineering has not provided any contemporaneous documentation reflecting the value of these expensed items, or from which Otis Engineering's claim can be verified. Accordingly, this element of the claim must fail on evidentiary grounds.

F. Bank accounts, securities and other intangibles

1. Otis Engineering - intangibles

388. Otis Engineering maintained a bank account in Kuwait as at 2 August 1990, and it claims for the loss of use of its deposits. The total claim is for US$2,511 based on prevailing interest rates during the relevant period. In support of this element of the claim, Otis Engineering provided a copy of its general ledger showing the bank balance. Otis Engineering has not provided any evidence that the account in question was an interest bearing account, or that Otis Engineering incurred additional financing costs as a result of the inaccessibility of these funds, or that the proposed rate of interest corresponds to this claimant's actual financing costs. As such, this element of the claim must fail on evidentiary grounds. The Panel makes no findings on whether this interest claim would have been compensable if it had been adequately proven.

389. Otis Engineering also advances a claim for prepaid deposits in Kuwait, and states that these deposits were posted in respect of office and apartment space. Otis Engineering has provided a general ledger showing a summary account in support of this claim, which totals US$12,429. The Panel finds that the evidence provided in support of this loss element is insufficient to establish the fact and the amount of any loss. Accordingly, this loss element of the claim must fail on evidentiary grounds.

390. Otis Engineering also made advances to its employees in the Middle East, and incurred expenses on their behalf. Otis Engineering states that its primary records with respect to the advances were destroyed in Kuwait as a result of Iraq's unlawful invasion and occupation of Kuwait, and that it has been precluded from recovering the advances from its employees because these records were destroyed. Otis Engineering states that the expenses incurred on behalf of employees were for services that were not actually received by Otis Engineering or the employees because of the invasion. Otis Engineering claims US$6,000 for advances to employees, supported by general ledger extracts confirming this amount. Otis Engineering also claims US$9,460 for expenses incurred on behalf of employees, again supported by a general ledger extract. The Panel finds that the evidence provided by Otis Engineering in support of this loss element establishes the fact and the amount of the advances and expenses. The Panel finds that Otis Engineering was unable to recover these amounts from its employees because the available records do not identify them, and because the expenses were advanced for services not actually provided due to the invasion. As a result, the Panel finds this loss element to be compensable in the amount of US$15,460.

391. Finally, Otis Engineering claims US$315,709 for outstanding accounts receivable for goods that were shipped to Kuwait and offloaded, but never received by Otis Engineering's agent. In support, Otis Engineering provided a copy of its agency agreement, its general terms and conditions of sale, the relevant accounts receivable reports with attached invoices, and shipping documentation. Based on a review of this documentation, the Panel has determined that one shipment with a value of US$23,714 was offloaded in Dubai, rather than in Kuwait. Otis Engineering has not satisfied the Panel that it received no value for this shipment, or that Otis Engineering took all reasonable steps to mitigate its losses with respect to that one shipment. The Panel is satisfied that the balance of the shipments were offloaded in Kuwait and destroyed or looted by Iraqi forces. The Panel accordingly finds that the remaining balance of the outstanding accounts receivable has been proved, in the amount of US$291,995, and that this loss resulted from Iraq's unlawful invasion and occupation of Kuwait.

392. In summary, the Panel recommends that compensation in the amount of US$15,460 be awarded for advances to employees and expenses incurred on their behalf, and US$291,995 for accounts receivable for goods destroyed or looted in Kuwait.

2. Halliburton Limited - intangibles

393. Halliburton Limited maintained a bank account in Kuwait as at 2 August 1990. In Halliburton Limited's case, funds were actually held up in transit from Citibank to Kuwait, as a result of Iraq's unlawful invasion and occupation of Kuwait. Halliburton Limited claims it was deprived of the use of these funds in transit until Kuwait was liberated, at which point it suffered a currency exchange loss as compared to pre-invasion exchange rates. Accordingly, Halliburton Limited claims US$25,334 for the loss of use of its funds based on average LIBOR rates, and US$12,277 in currency exchange losses. In support of this element of the claim, Halliburton Limited provided fund transfer documents.

394. Halliburton Limited has provided no evidence that it incurred additional financing costs, or a loss of investment opportunity, or that the proposed rate of interest corresponds to this claimant's actual financing costs. As such, this element of the claim must fail on evidentiary grounds. The Panel makes no findings on whether the interest portion of this claim would have been compensable if it had been adequately proven.

395. The Panel finds that the amount claimed by Halliburton Limited for currency losses is not compensable as the loss is too remote and speculative to be considered a direct result of the unlawful invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation with respect to this loss element.

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396. Halliburton Limited also maintains a bank account in Iraq, and claims that it has lost the use of the funds in that account which it states are worth the equivalent of US$36,666. Halliburton Limited states that its only copies of the relevant bank records were in Iraq and Kuwait and have been lost. In support of this claim Halliburton Limited has provided an internal Halliburton Limited document referring to the United States currency equivalent of the amount on deposit.

397. Halliburton Limited has provided no evidence that the funds held on deposit in Iraq have been "expropriated, removed, stolen or destroyed" 30/; furthermore the Panel notes that these Iraqi dinar funds have at all relevant times been non-transferable and non-exchangeable. 31/ As such, the Panel finds that Halliburton Limited has suffered no compensable loss with respect to funds held on deposit in Iraq.

398. Halliburton Limited also advances a claim for prepaid deposits in Kuwait and Iraq, and states that these deposits were posted in respect of office and apartment space in those countries. Halliburton Limited has provided extracts of internal accounting documentation in support of this claim, which totals US$36,761. The Panel finds that the evidence provided in support of this loss element is insufficient to establish the fact and the amount of any loss. Accordingly, this loss element of the claim must fail on evidentiary grounds.

399. Halliburton Limited also made advances to its employees in the Middle East. Halliburton Limited states that its primary records with respect to these amounts were destroyed in Kuwait as a result of Iraq's unlawful invasion and occupation of Kuwait, and that it has therefore been precluded from recovering these advances from its employees. Halliburton Limited claims US$22,328 for advances made to employees, supported by financial records identifying the employees and the amounts. The Panel finds that the evidence provided by Halliburton Limited in support of this loss element establishes the fact and the amount of the advances, and the employees who received the advances, with a great deal of particularity. In the circumstances the Panel is unable to identify any loss suffered by Halliburton Limited with respect to these advances, as a result of the invasion or otherwise, and these advances appear to be recoverable from the relevant employees.

400. Halliburton Limited also advances a claim for US$4,764.00 for an outstanding account to Al-Jahlani Trading, a Kuwait company that Halliburton Limited claims failed as a result of Iraq's unlawful invasion and occupation of Kuwait. In support, Halliburton Limited provides copies of the invoices, and an accounts receivable report. However, Halliburton Limited has not provided any evidence that Al-Jahlani Trading failed, or that it failed as a result of the invasion. Accordingly, the Panel finds that this element of the claim cannot succeed for lack of evidence.

G. Recommended award

401. The recommendations of the Panel with respect to the Halliburton Claimants can be summarized as follows:

Table 14. Halliburton recommended compensation

Claimant	Claim item	Claim (US$)	Recommendation (US$)
Halliburton Company	Decline in operating income	1,071,000	1,051,000
	Compensation paid to others	383,549	0
	Sub-total	1,454,549	1,051,000
Halliburton Geophysical	Compensation paid to others	315,613	315,613
	Contract Losses	12,371,975	11,891,914
	Sub-total	12,687,588	12,207,527
Halliburton Logging	Contract Losses	3,990,436	1,465,751
	Sub-total	3,990,436	1,465,751
Otis Engineering	Decline in operating income	2,375,000	0
	Compensation paid to others	609,010	465,213
	Contract Losses	2,011,422	0
	Loss of tangible property	367,624	83,798
	Bank accounts, securities and other intangibles	346,109	307,455
	Sub-total	5,709,165	856,466
Halliburton Limited	Decline in operating income	1,708,000	965,286
	Compensation paid to others	1,026,791	552,020
	Loss of tangible property	8,887,752	989,213
	Bank accounts, securities and other intangibles	138,132	0
	Sub-total	11,760,675	2,506,519
	Total	35,602,413	18,087,263

IX. CLAIM OF WOOD GROUP ENGINEERING LIMITED

402. Wood Group Engineering Limited ("Wood Group") is a private limited company organized under the laws of the United Kingdom. On 10 January 1987 Wood Group and a Kuwaiti partner entered into a contract (the "Maintenance Contract") to provide maintenance services in Kuwait to KOC; the term of the Maintenance Contract ran from 1 April 1987 to 31 March 1991.

403. Wood Group seeks compensation in the amount of £ stg. 185,740 and KD 244,853, net of claim preparation costs, for losses suffered as a result of Iraq's unlawful invasion and occupation of Kuwait. Wood Group's claim is summarized as follows:

Table 15. Wood Group net claims

Loss element	Claim (£ stg.)	Claim (KD)
Loss of profit		78,475
Mobilization costs		86,688
Employee loans		3,705
Interest		19,945
Tangible assets		56,040
Payments to relatives of employees	4,683	
Contract payments to employees	147,722	
Humanitarian expenses	14,668	
Management time	12,000	
Mitigation expenses	6,667	
Total 32/	185,740	244,853

A. Loss of profit

404. Wood Group claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, it was not able to perform and receive revenues under the Maintenance Contract between 2 August 1990, the date of Iraq's invasion of Kuwait, and 31 March 1991, the expiration date of the contract.

405. Wood Group seeks compensation in the amount of KD 78,475 for the resulting loss of profits. Wood Group states that this amount is based on profits it earned under the Maintenance Contract during the three-month period that ended on 30 June 1990. Specifically, such profits were divided by 3 to derive monthly profit. Monthly profit was then multiplied by 8 months, the remainder of the term of the Maintenance Contract, to calculate Wood Group's claimed loss of profits.

406. In support of this claim element, Wood Group has provided income statement accounts with respect to its performance under the Maintenance Contract for the three-month period that ended on 30 June 1990 and a copy of the Maintenance Contract.

407. The Panel finds that Wood Group could not have performed and received revenues under the Maintenance Contract during Iraq's occupation of Kuwait. In calculating Wood Group's loss of profits, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property.

408. The Panel believes, based on its review of the evidence provided and on the opinion of its consultants, that there were no seasonal or periodical variations in revenues and costs under the Maintenance Contract. The Panel therefore finds that it is appropriate to employ profits earned by Wood Group during the three-month period that ended on 30 June 1990 as the basis for the calculation of profits that Wood Group would have earned between 2 August 1990 and 31 March 1991 if Iraq had not invaded Kuwait.

409. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of KD 78,475 be awarded with respect to this loss element.

B. Mobilization costs

410. Wood Group advances a claim for a portion of certain initial manpower and equipment expenses that it incurred prior to the beginning of the Maintenance Contract; this portion, it states, would have been recovered by Wood Group if payments under the Maintenance Contract had proceeded normally between August 1990 and March 1991. Wood Group seeks compensation in the amount of KD 86,688 for such unrecovered costs.

411. In support of this loss element, Wood Group has provided to the Commission a copy of the Maintenance Contract and financial statements with respect to the Maintenance Contract for the three-month period ending 30 June 1990.

412. The balance sheet provided by Wood Group contains an entry, denominated "sundry debtors and prepayments", in the claimed amount. Wood Group has not, however, provided to the Commission a detailed description of the claimed mobilization costs and documentary evidence that these were incurred. The Panel finds that the "sundry debtors and prepayments" balance sheet entry is not sufficient evidence of the claimed loss because Wood Group has not broken it down into its component expenses and provided evidence of their occurrence. The Panel also finds that the mobilization requirements set forth in the Maintenance Contract have insufficient evidentiary value because they have not been reconciled with the claimed costs.

413. The Panel accordingly finds that Wood Group's claim with respect to mobilization costs must fail on evidentiary grounds and recommends that no compensation be awarded with respect to this loss element.

C. Employee loans

414. Wood Group states that it had provided loans to certain employees recruited to work under the Maintenance Contract. Such loans were being repaid through monthly wage deductions. Wood Group claims that repayment of the loans ceased when the wages of the relevant employees stopped being paid as a result of Iraq's unlawful invasion and occupation of Kuwait. Wood Group seeks compensation in the amount of KD 3,705 for the resulting losses.

415. In support of this loss element, Wood Group has provided to the Commission no evidence in addition to the balance sheet with respect to the Maintenance Contract for the three-month period ended 30 June 1990. Such balance sheet contains an item denominated "staff loan account" in the claimed amount. In a question posed in December of 1998, the Panel asked Wood Group for additional evidence that the loans were made. Wood Group replied that it was unable to provide any further evidence.

416. The Panel finds that the balance sheet entry alone is not sufficient to provide Wood Group's loss.

417. The Panel therefore finds that Wood Group's claim with respect to employee loans must fail on evidentiary grounds and accordingly recommends that no compensation be awarded.

D. Interest

418. Wood Group states that on 20 August 1991 KOC belatedly paid it KD 242,575 for work carried out under the Maintenance Contract prior to Iraq's invasion and occupation of Kuwait. Because such amount was due to be paid on 1 September 1990, Wood Group claims that it was compelled to incur interest charges of KD 19,945 through use of a bank overdraft facility and seeks compensation in that amount.

419. In support of this loss element, Wood Group has provided to the Commission a copy of a bank statement with respect to a Wood Group account showing the receipt of a payment in the amount of KD 242,575 on 20 August 1991.

420. The Panel finds that Wood Group has not proved that the amount on which interest charges were calculated was due to be paid to it on 1 September 1990 and that it has not provided evidence that it incurred the claimed overdraft charges.

421. Accordingly, the Panel finds that Wood Group's claim with respect to interest charges must fail on evidentiary grounds and recommends that no compensation be awarded. The Panel makes no findings on whether Wood Group's claimed interest loss would have been compensable if it had been adequately proved.

E. Tangible assets

422. Under the Maintenance Contract, Wood Group was required to provide to KOC a fully equipped mechanical workshop, a diagnostic vibration laboratory and other tools and equipment. Wood Group alleges that these items were destroyed or looted during Iraq's occupation of Kuwait and therefore seeks compensation in the amount of KD 56,040, their book value on 30 June 1990.

423. In support of this loss element, Wood Group has provided a copy of Appendix E of the Maintenance Contract, which lists required tangible assets. In addition, Wood Group has provided the balance sheet with respect to the maintenance contract for the three-month period ended 30 June 1990, which contains an entry, denominated "fixed assets", which adds up to the claimed amounts. The Panel has also viewed a 1991 balance sheet of Wood Group that reports a write off of such assets.

424. Wood Group has not, however, provided a description of the circumstances of the loss or evidence of looting or destruction of the assets. The Panel therefore finds that Wood Group's claim with respect to tangible assets must fail on evidentiary grounds and recommends that no compensation be awarded.

F. Payments to relatives of employees

425. Wood Group seeks compensation in the amount of £ stg. 4,633 for payments made to relatives of employees held hostage in Iraq.

426. Wood Group has not, however, provided documentation in support of this loss element.

427. The Panel therefore finds that Wood Group's claim with respect to payments made to relatives of employees must fail on evidentiary grounds and recommends that no compensation be awarded.

G. Contract payments to employees

428. Wood Group claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, it had to make termination payments to a number of employees who had been hired to work under the Maintenance Contract pursuant to fixed-term contracts; such payments were equal to their full wage entitlements from the date of Iraq's invasion of Kuwait to the end of the term of the Maintenance Contract. Wood Group seeks compensation in the amount of £ stg. 147,722 for the resulting losses.

429. In support of this loss element, Wood Group has provided to the Commission copies of letters accompanying payments made to such employees and receipts from such employees.

430. Although Wood Group has not provided copies of employment contracts with the relevant employees, the Panel believes that, because a prudent contractor would seek to make arrangements with employees with a term equal to that of the project they were hired to work on, such arrangements were in place in this instance as well. The Panel therefore finds that Wood Group's claim that it was contractually obligated to make the termination payments to employees whose contracts had not expired at the time of Iraq's invasion of Kuwait is credible.

431. In addition, the Panel finds that Wood Group has provided sufficient evidence with respect to payment of the claimed amount to employees.

432. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of £ stg. 147,722 be awarded with respect to this loss element.

H. Humanitarian expenses

433. Wood Group seeks compensation in the amount of £ stg. 14,668 for a payment made to its employees in Kuwait shortly after Iraq's invasion of that country to enable them to buy food, certain travel expenses incurred by Wood Group management to visit and provide assistance to relatives of employees taken hostage by Iraqi forces and payments made to the Government of the United Kingdom for the evacuation expenses of Wood Group employees in Kuwait.

434. In support of this loss element, Wood Group has provided to the Commission copies of several claim forms and invoices with respect to travel expenses, a letter from the Foreign and Commonwealth Office of the United Kingdom confirming receipt from the Wood Group of a payment with respect to the evacuation of British nationals from Iraq and Kuwait and a copy of a letter from Wood Group to an employee accompanying reimbursement for payments made to other Wood Group employees in Kuwait for food.

435. The Panel finds that proven humanitarian expenses described by Wood Group were incurred as a direct result of Iraq's unlawful invasion and occupation of Kuwait. The Panel finds that Wood Group has provided sufficient documentary evidence with respect to only £ stg. 9,015 of the claimed expenses and accordingly recommends that compensation be awarded in the United States dollar equivalent of that amount.

I. Management time

436. Wood Group seeks compensation in the amount of £ stg. 12,000 for time spent by senior executives on the matters described under "Humanitarian expenses" above.

437. Wood Group has not claimed that it incurred extraordinary expenses to compensate employees for additional work caused by Iraq's unlawful invasion and occupation of Kuwait.

438. The Panel therefore finds that any additional work performed by Wood Group employees does not constitute a compensable loss as it did not cause Wood Group to bear a corresponding additional expense. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

J. Mitigation expenses

439. Wood Group seeks compensation in the amount of £ stg. 6,667 for legal fees incurred after the invasion of Kuwait for advice with respect to its position with respect to amounts owed to it by KOC under the Maintenance Contract and employees hired to perform work covered by the Maintenance Contract. The claimed legal fees do not relate to Wood Group's claim before the Commission.

440. Wood Group has submitted copies of several lawyers' fee statements in support of this loss element.

441. The Panel notes that the evidence provided confirms that Wood Group incurred legal expenses to seek the information stated in paragraph 439, supra. The Panel finds that it was reasonable for Wood Group to seek such information in order to mitigate losses suffered as a direct result of Iraq's unlawful invasion and occupation of Kuwait and believes that proven expenses incurred for that purpose should be compensable. However, the Panel notes that the law firm statements provided by Wood Group only evidence total mitigation expenses of £ stg. 6,248. Accordingly, the Panel recommends that compensation be awarded in the United States dollar equivalent of that amount.

K. Recommended award

442. In summary, the recommendations of the Panel are as follows:

Table 16. Wood Group recommended compensation

Loss element		Claim	Recommendation (Original currency)	Recommendation (US$)
Loss of profit	(KD)	78,475	78,475	271,540
Mobilization costs	(KD)	86,688	0	0
Employee loans	(KD)	3,705	0	0
Interest	(KD)	19,945	0	0
Tangible assets	(KD)	56,040	0	0
Payments to relatives of employees	(£ stg.)	4,683	0	0
Contract payments to employees	(£ stg.)	147,722	147,722	289,651
Humanitarian expenses	(£ stg.)	14,668	9,015	17,676
Management time	(£ stg.)	12,000	0	0
Mitigation expenses	(£ stg.)	6,667	6,248	12,251
Totals	(KD)	244,853	78,475	271,540
	(£ stg.)	185,740	162,985	319,578
Total recommendation (US$)				591,118

X. CLAIM OF DRESSER INDUSTRIES, INC.

443. Dresser Industries, Inc. ("Dresser") is a corporation incorporated under the laws of the State of Delaware, United States of America, which has operations in the oil field service and supply business.

444. Dresser claims that it held legal title to 65 drill bits that had been consigned to Dresser Industrial Co. Kuwait S.A.K. "Dresser Industrial" prior to 2 August 1990; at the time of Iraq's invasion of Kuwait the drill bits were located at certain premises of KOC in Kuwait and were intended to be sold to KOC on an "as needed" basis. Dresser claims that the drill bits were stolen by Iraqi military forces during their occupation of Kuwait. Dresser seeks compensation in the amount of US$342,819 for the resulting losses; such amount, it claims, represents the market value of the drill bits at the time they were stolen. Dresser's claim is as follows:

Table 17. Dresser net claim

Loss element	Claim (US$)
Loss of drill bits	342,819

445. Dresser has provided a list of the drill bits, certain witness evidence with respect to the circumstances of the claimed loss and certain invoices concerning the drill bits.

446. The Panel notes that, in support of its claim, Dresser has provided an affidavit of a Dresser employee who was in Kuwait at the relevant time. In this affidavit, the employee confirms that Dresser's drill bits were kept at the KOC location prior to 2 August 1990 and that no drill bits were at such location when he returned there immediately after the liberation of Kuwait. The employee did not, however, state how many drill bits were stolen from the KOC location during Iraq's occupation of Kuwait. Dresser claims that such information is included in a "list of Kuwait inventory written off October 1991" that has been provided. Because the list was prepared two years after the date of the claimed loss, the Panel asked Dresser to provide more contemporaneous evidence, such as records of inventory counts performed soon before Iraq's invasion of Kuwait, with respect to the location of the drill bits. In reply, Dresser stated that it was not able to provide such evidence. The Panel finds that, by itself, the "list of Kuwait inventory written off October 1991" does not prove that the drill bits were at the claimed location on 2 August 1990. Accordingly, the Panel finds that Dresser has provided insufficient evidence that, on the date of Iraq's invasion of Kuwait, the claimed number of drill bits were at the location from which Dresser claims they were stolen.

447. In addition, Dresser has not provided evidence, such as a price list or invoices for past sale, of the prices normally charged to KOC or other customers for drill bits at the time of Iraq's invasion of Kuwait. Instead, it has provided numerous invoices evidencing transfers of drill bits among Dresser and its subsidiaries. Because such invoices do not prove the market value of the drill bits, the Panel specifically asked Dresser to provide a price list or copies of invoices evidencing prices it charged customers for drill bits in 1990. Dresser has failed to provide any such evidence. The Panel therefore finds that Dresser has provided insufficient evidence with respect to the market value of the drill bits.

448. Because Dresser has not proved the location of the drill bits on the date of Iraq's invasion of Kuwait and their market value, the Panel finds that Dresser's claim must fail on evidentiary grounds and recommends that no compensation be awarded. The recommendation of the Panel is therefore as follows:

Table 18. Dresser recommended compensation

Loss element	Claim (US$)	Recommendation (US$)
Loss of drill bits	342,819	0

XI. CLAIM OF NATIONAL-OILWELL

449. National-Oilwell ("NOW") is a limited partnership organized pursuant to the laws of the State of Delaware, United States of America. On 25 January 1990, NOW entered into a contract with North Oil Company of Iraq ("North Oil") pursuant to which NOW agreed to deliver two complete oil well work-over rigs to North Oil for a total purchase price of US$7,642,000, with payment to be made by Letter of Credit. NOW advances claims arising from the cancellation of this contract, which it claims was caused by Iraq's invasion and occupation of Kuwait. The total amount of NOW's claim (as per its amended claim) is US$1,531,428. This is summarized as follows:

Table 19. NOW net claims

Loss element	Claim (US$)
Resale and cancellation costs	907,636
Loss of profit	623,792
Total	1,531,428

450. Pursuant to the contract between NOW and North Oil, delivery of the first rig was to take place 8.5 months after the establishment by North Oil of a Letter of Credit for the purchase price, and delivery of the second rig was to take place 9 months after the establishment of a second such Letter of Credit. The first Letter of Credit was required to be opened no later than 90 days after the signing of the contract, and the second Letter of Credit was required to be opened no later than 90 days after the first.

451. The first Letter of Credit was opened in accordance with the contract. The second Letter of Credit was not opened. Nevertheless, NOW had ordered components for both rigs from its suppliers as at 2 August 1990, and had in fact received components for both rigs. NOW has advised the Panel that it was necessary to order components for both rigs notwithstanding that the second letter of credit was not yet in place in order to secure favourable pricing from NOW's suppliers, and this decision was taken based on a history of successful transactions with North Oil. The Panel finds this explanation to be reasonable.

A. Resale and cancellation costs

452. It is clear from the materials filed with the Commission that NOW intended to order the majority of the necessary rig components from its suppliers, while providing some components out of its own inventory. NOW had commenced ordering the necessary components for the subject rigs as of 2 August 1990, and it claims that it was forced by Iraq's unlawful invasion and occupation of Kuwait to sell some such components already received at a loss, and to cancel other such orders. NOW claims that this resulted in

/...

resale losses for components already acquired and cancellation charges levied by suppliers.

453. Specifically, NOW contends in its amended claim that it suffered a net loss of US$907,636 on the resale of components purchased from its suppliers, and in cancellation penalties.

454. In support of these contentions, NOW has provided a complete copy of the contract with North Oil, along with numerous invoices and correspondence showing the costs and cancellation penalties incurred by NOW, and the resale amounts achieved by NOW with respect to components that NOW had received. NOW has also provided affidavit evidence in support of the resale and cancellation claims.

455. With the assistance of its consultants and the secretariat, the Panel has reviewed all of the supporting material filed with the Commission by NOW. The Panel has been particularly concerned to verify original purchase amounts agreed between NOW and its suppliers, any cancellation charges imposed by those suppliers, and the resale values achieved by NOW. The Panel has also been concerned to verify that NOW took appropriate steps to mitigate its losses.

456. Taking into account the issues outlined above, the Panel finds that NOW has proved a net loss of US$358,835 in connection with goods manufactured by NOW's supplier Dreco Ltd. Similarly, the Panel finds that NOW has proved a net loss of US$378,500 in connection with goods manufactured by NOW's supplier Roberds Johnson. Finally, the Panel finds that NOW has proved a net loss of US$54,337 in connection with goods manufactured by NOW's supplier Gulf Power. The total net loss proved by NOW with respect to goods manufactured on its behalf is US$791,672.

457. The Panel finds that NOW has not proved any net loss with respect to the remainder of this loss element, relating to goods manufactured by NOW's suppliers Porta-Camp and PARMAC, or regarding cancellation fees charged by the suppliers Brandt, Halco or Century Business. The claims with respect to these suppliers were not supported by primary and contemporaneous documentation that would permit the Panel to assess or verify these losses.

458. Accordingly, the Panel recommends compensation in the amount of US$791,672 for resale and cancellation costs.

B. Loss of profit

459. NOW argues that it lost profits of "approximately" US$623,792 as a result of the termination of this project. In support of this loss of profits claim, NOW provided to the Commission a profitability analysis on this contract, along with information on margins earned by the claimant during the time period in question on similar contracts.

460. The Panel recognizes that some of the profitability information provided by NOW is commercially sensitive and confidential, and that information will accordingly not be reviewed in this report in detail. The Panel finds that NOW has proved a loss of profits on the North Oil contract. In calculating such loss of profits the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property. The Panel finds that this loss of profits was not less than US$232,712. This figure was derived by applying the lowest potential profit percentages advanced by NOW as against the contract price adjusted for contingencies. As a result, the Panel recommends an award for loss of profits under the North Oil contract of US$232,712.

C. Recommended award

461. In summary, the recommendations of the Panel are as follows:

Table 20. NOW recommended compensation

Loss element	Claim (US$)	Recommendation (US$)
Contract losses - resale & cancellation costs	907,636	791,672
Contract losses - loss of profit	623,792	232,712
Total	1,531,428	1,024,384

XII. CLAIM OF OGE DRILLING INC.

462. OGE Drilling, Inc. ("OGE") is a closely-held corporation incorporated under the laws of the state of Texas, United States of America, which specializes in the provision of oil and gas drilling consulting services.

463. In 1984 OGE entered into a contract with KOC to second certain drilling personnel to KOC (the "Secondment Contract"); the term of such contract was later extended to 31 January 1991 by means of several adjustment orders. At the time of Iraq's invasion of Kuwait, 18 employees of OGE had been assigned to duties in Kuwait under the Secondment Contract.

464. OGE seeks compensation in the amount of US$415,911, net of interest and claim preparation costs, for losses suffered as a result of Iraq's unlawful invasion and occupation of Kuwait. OGE's claim is summarized as follows:

Table 21. OGE net claims

Loss element	Claim (US$)
Loss of profit	183,739
Interest	77,029
Employee time	68,978
Office & professional expenses	21,410
Repatriation expenses	3,706
Insurance expenses	41,849
Relief payments	19,200
Total	415,911

A. Loss of profit

465. OGE claims that due to Iraq's invasion and occupation of Kuwait it failed to earn revenues under the Secondment Contract between 2 August 1990 and the end of the term of the Secondment Contract; as a result, it lost US$183,739 in profits. Such amount represents profits projected by OGE to be earned under the Secondment Contract during that period minus estimated taxes payable to the Government of Kuwait; in calculating it, OGE relied on the assumption that, if the invasion of Kuwait had not occurred, 18 OGE employees would have continued to be seconded to KOC until the end of the term of the Secondment Contract.

466. OGE has provided copies of the Secondment Contract along with certain adjustment orders, monthly allocated income statements with respect to the Secondment Contract for the period between December 1989 and August 1990, a description of Kuwaiti income taxation, descriptions of salary and other expenses related to the Secondment Contract and an invoice with respect to

services provided to KOC by 18 OGE employees immediately prior to Iraq's invasion of Kuwait.

467. In considering OGE's loss of profits claim, the Panel has referred to decision 9, which sets forth certain methods for the valuation of losses relating to income-producing property. With the assistance of its consultants, the Panel has tested the reasonableness of OGE's claimed loss of profit through comparisons between historical information with respect to revenue and income earned under the Secondment Contract and the projections employed by OGE to calculate the magnitude of its loss. Based on the evidence provided and on this comparison, the Panel finds that it is reasonable to conclude that 18 employees of OGE would have continued to be seconded to OGE between 2 August 1990 and 31 January 1991 and that OGE has not overstated its claimed loss of profit. The Panel therefore recommends compensation in the claimed amount of US$183,739, without thereby finding that potential income tax liabilities should, as a rule, be deducted from a loss of profit award.

1. Post-occupation profits

468. In reply to a question from the Panel, OGE has stated that, after the liberation of Kuwait, OGE earned significant profits as a result of its participation in the reconstruction of Kuwait. The Panel finds that this was not work under the Secondment Contract that was deferred as a result of Iraq's unlawful invasion and occupation of Kuwait. In addition, the Panel notes that such work was of a different nature from that performed by OGE under the Secondment Contract.

469. The Panel finds that work performed by OGE in Kuwait during the post-liberation period was the result of a unique and temporary opportunity to provide highly specialized oil field services and supplies, including oil well firefighting activities. OGE sought and obtained work arising from this economic opportunity, as did many oil field supply and service companies, including companies that had previously conducted little or no work in the Persian Gulf. The Panel concludes that it would be incorrect to set off profits associated with the exploitation of this unique and temporary economic opportunity against losses suffered during the occupation of Kuwait, as those losses resulted from a decline in work of an essentially different nature from the work undertaken by these claimants in the post-liberation period.

470. In short, a reduction in any award to OGE based on post-liberation profits would, on the specific facts of those cases, be a finding that profits earned from an essentially new enterprise providing new products and services on the Kuwaiti market should be set off against losses suffered in OGE's traditional field of work. The Panel notes that such a finding would not be in keeping with traditional principles of mitigation.

471. The Panel specifically finds that its recommendations must:

> "... as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would in all probability, have existed if that act had not been committed." 33/

472. In this case, the consequences of Iraq's unlawful invasion and occupation of Kuwait on OGE would not be eliminated by a recommendation which included a deduction from OGE's claim based on revenue earned in a purely collateral way, largely from the deployment of capital not previously employed in the region, and in an essentially new enterprise. The Panel also specifically finds that OGE will not be unjustly enriched by the Panel's recommendations for the reasons outlined above, and because the post-liberation income was earned by OGE and resulted from large volumes of new work rather than unusual profit margins. 34/ The Panel finds that this income was in no way a windfall to OGE.

B. Interest

473. OGE alleges that certain amounts due to it under the Secondment Contract were, as a result of Iraq's unlawful invasion and occupation of Kuwait, paid between 374 and 805 days late. OGE claims US$77,029 in lost interest for such delays.

474. OGE has stated that such amount was calculated with reference to the "prime rate", beginning 31 days after the date of the relevant invoice and ending on the day of payment of such invoice. OGE has provided a list of such overdue payments copies of invoices addressed to KOC covering services provided under the Secondment Contract and copies of bank statements evidencing receipt of some of the amounts paid late.

475. The Panel notes that OGE has not provided evidence that KOC was contractually required to pay the amounts allegedly paid late on the stated due dates. In addition, OGE has not provided evidence that the "prime rate" with reference to which its claimed interest loss was calculated corresponded to financing costs actually incurred by OGE or to a return that OGE would have earned on the sum paid late if it had been received on time.

476. Accordingly, the Panel finds that OGE's claim for lost interest must fail on evidentiary grounds and recommends that no compensation be awarded. The Panel makes no finding on whether OGE's claimed interest would have been compensable if it had been adequately proven.

C. Employee time

477. OGE also seeks compensation in the amount of US$68,978, plus claim preparation costs of US$9,302, for time spent by three of its employees on matters related to the termination of the Secondment Contract as a result of Iraq's unlawful invasion and occupation of Kuwait. Such matters allegedly included the provision of assistance to former employees and their families, attempts to recover amounts owed to OGE under the Secondment Contract, the defence of OGE in a lawsuit brought by a former employee who had been held hostage by Iraqi forces and the preparation of OGE's claim before the Commission.

478. OGE has not claimed that it incurred extraordinary expenses to compensate employees for additional work caused by Iraq's occupation of Kuwait. Instead, it has stated its claimed loss as a percentage of the existing salaries of the relevant employees and corresponding payroll taxes.

479. The Panel finds that, notwithstanding the question of whether it occurred and was a direct result of Iraq's invasion and occupation of Kuwait, any additional work performed by OGE employees does not constitute a compensable loss as it did not cause OGE to bear a corresponding additional expense. Accordingly, the Panel recommends that no compensation be awarded with respect to this loss element.

D. Office and professional expenses

480. OGE claims that it incurred US$21,410 in office and professional expenses as a result of Iraq's occupation of Kuwait and the termination of the Secondment Contract. Of such amount, US$7,001 represents office expenses including postage, telephone and supplies, and US$14,409 represents professional expenses including legal, accounting and consulting fees.

1. Office expenses

481. OGE has provided to the Commission numerous invoices with respect to the claimed office expenses; it has not, however, provided detailed explanations for such expenses. The Panel has not therefore been able to determine whether these were incurred as a direct result of Iraq's invasion and occupation of Kuwait.

482. Accordingly, the Panel recommends that no compensation be awarded for OGE's claimed office expenses.

2. Professional expenses

483. OGE's claimed professional expenses include legal costs incurred to defend OGE in a lawsuit brought by a former employee who was taken hostage in Kuwait, to prepare a letter to relatives of OGE employees taken hostage in Kuwait and to research certain insurance requirements with respect to workmens' compensation coverage of employees in the Middle East. Other professional expenses were incurred for advice with respect to the collection and tax implications of amounts owed by KOC.

484. OGE has provided several law and accounting firm fee statements as evidence of professional fees incurred.

485. The Panel notes that OGE has stated that it dismissed all employees seconded to KOC upon Iraq's invasion of Kuwait. In the absence of evidence to the contrary, the Panel deduces from this that legal fees incurred to prepare a letter to the relatives of former employees held hostage in Kuwait and to research other matters related to employees were more directly caused by OGE's desire to avoid any negative legal repercussions of its decision to terminate the employment of its seconded employees than by Iraq's unlawful invasion and occupation of Kuwait.

486. The Panel also finds that OGE has not provided sufficient evidence that legal expenses incurred to defend OGE against a lawsuit brought by a former employee were a direct result of Iraq's unlawful invasion and occupation of Kuwait rather than of other factors. In addition, the Panel finds that OGE has not provided sufficient details on how professional fees with respect to the collection and tax implications of amounts owed by KOC were incurred, and that it has not stated or provided evidence of how these resulted from Iraq's invasion and occupation of Kuwait.

487. Accordingly, the Panel recommends that no compensation be awarded for OGE's claimed professional expenses.

E. Repatriation expenses

488. OGE claims that after the invasion of Kuwait by Iraq it was forced to pay certain expenses associated with the repatriation of employees from Kuwait. OGE was later reimbursed pursuant to the Secondment Contract by KOC for a portion of such expenses; it is seeking compensation in the amount of US$3,706 for the remainder.

489. In support of this portion of its claim, OGE has provided several invoices and receipts with respect to repatriation expenses and a letter from KOC stating which of such expenses would be reimbursed by KOC. OGE has not, however, reconciled invoices and receipts to amounts not reimbursed by KOC and explained why such amounts were not reimbursed.

490. The Panel finds that OGE has not provided a sufficiently detailed explanation of the claimed expenses or an explanation as to why these expenses were not reimbursed by KOC. The Panel accordingly recommends that no compensation be awarded with respect to this loss element.

F. Insurance expenses

491. OGE claims that, although it terminated the employment of employees assigned to work under the Maintenance Contract in Kuwait on 2 August 1990, it continued to pay certain medical, life, workers' compensation and general liability insurance expenses of all such employees until the end of August 1990; OGE covered the cost of such insurance for employees that were detained as hostages in Iraq and Kuwait until their release in April of 1991. OGE claims US$41,849 for such insurance expenses, in support of which it has provided invoices for insurance and workers' compensation coverage.

492. The Panel finds that, because the claimed insurance expenses relate to OGE employees seconded to KOC, these represented part of the costs of OGE's performance under the Secondment Contract. In considering OGE's loss of profits claim (see paras. 465-467, supra) the Panel has already found that, as a result of Iraq's unlawful invasion and occupation of Kuwait, OGE did not earn revenues under the Secondment Contract between 2 August 1990 and the end of the term of the Secondment Contract. As insurance expenses would have been paid out of such revenues, the Panel finds that proven insurance expenses incurred between 2 August 1990 and the end of the term of the Secondment Contract are compensable to the extent that OGE would not already be compensated for them by means of the Panel's recommended loss of profits award. The Panel notes that it has found that OGE has not overstated the magnitude of its claimed loss of profits and has recommended that compensation in the claimed amount be awarded with respect to it.

493. The Panel notes that, in calculating its claimed loss of profit under the Secondment Contract, OGE subtracted from anticipated revenues certain general and administrative expenses related to the Secondment Contract. Without specifying their magnitude, OGE has stated that the subtracted general and administrative expenses included certain employee insurance expenses; these were, notwithstanding Iraq's invasion and occupation of Kuwait, actually incurred. Based on a review of OGE's allocated financial statements, the Panel has, with the assistance of its consultants, determined that the insurance expenses subtracted from projected revenues in the calculation of OGE's claimed loss of profit were equal to US$12,656.00.

494. The Panel finds that the documentary evidence provided confirms that OGE incurred at least US$12,656 in insurance expenses with respect to employees seconded to KOC between 2 August 1990 and the end of the term of the Secondment Contract.

495. However, the Panel notes that the employee insurance expenses claimed by OGE exceed US$12,656. As OGE has only subtracted US$12,656 in insurance expenses from its loss of profits claim, an award in excess of US$12,656 would result in overcompensation. The Panel finds this to be correct whether OGE charged the insurance expenses in excess of US$12,656 against revenues from the Secondment Contract or to another account. Accordingly, the Panel recommends an award of US$12,656 for employee insurance expenses incurred during the term of the Secondment Contract.

496. The Panel notes that another portion of the claimed employee insurance expenses relates to coverage of hostage employees after the end of the term of the Secondment Contract. With the assistance of its consultants, the Panel has determined that such portion is equal to US$7,275. The Panel finds that such expenses were incurred as a result of Iraq's unlawful invasion and occupation of Kuwait. In addition, because the employee insurance expenses proved to have been incurred after the end of the term of the Secondment Contract were not a cost of performance under the Secondment Contract, the Panel finds that they are compensable under this heading.

497. Accordingly, the Panel recommends compensation in the amount of US$12,656 for employee insurance expenses incurred during the term of the Secondment Contract and US$7,275 for employee insurance expenses incurred after the end of the term of the Secondment Contract.

G. Relief payments

498. Finally, OGE seeks compensation in the amount of US$19,200 for relief payments made to the families of employees detained as hostages in Iraq and Kuwait. In support of this component of its claim OGE has provided copies of six bank cheques representing such relief payments.

499. The Panel finds that the OGE has provided adequate evidence of such relief payments and recommends that compensation in the amount of US$19,200 be awarded.

H. Recommended award

500. In summary, the recommendations of the Panel are as follows:

Table 22. OGE recommended compensation

Loss element	Claim (US$)	Recommendation (US$)
Loss of profit	183,739	183,739
Interest	77,029	0
Employee time	68,978	0
Office & professional expenses	21,410	0
Repatriation expenses	3,706	0
Insurance expenses	41,849	19,931
Relief payments	19,200	19,200
Total	415,911	222,870

XIII. INCIDENTAL ISSUES

A. Currency exchange rate

501. The Panel notes that several of the claimants have advanced claims in currencies other than United States dollars. The Panel has assessed all such claims, and performed all claim calculations, in the original claim currencies. However, the Commission issues its awards in United States dollars. Accordingly, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed and assessed in currencies other than United States dollars.

502. The Panel also notes that all prior Commission compensation awards have relied upon the United Nations Monthly Bulletin of Statistics for determining commercial exchange rates into United States dollars. The Panel adopts that approach for this report.

503. In the circumstances, the Panel finds that the appropriate currency exchange rate to be applied to the claims advanced in the Third Instalment in currencies other than the United States dollar is the rate prevailing on the date of loss, as outlined in section XIII.B (infra). 35/

504. In the body of this report, the Panel has prepared a claim summary chart for each claimant, which appears at the conclusion of the Panel's assessment of each claim. Where claimants have advanced claims in currencies other than United States dollars, the Panel has converted those claims into United States dollars in the claim summary charts, based on the approach outlined above.

B. Interest

505. All claim figures in the body of this report are net of any individual interest claims advanced by the claimants.

506. In accordance with Governing Council decision 16, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16, the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing a decision on the methods of calculation and payment of interest.

507. The task of the Panel, therefore, is to determine the date from which interest will run for successful claimants in the Third Instalment.

508. In each case where a precise date of loss is apparent or discernable, the Panel recommends that precise date as the date from which interest will run.

509. In some cases, a precise date of loss cannot be established. In those cases, the Panel has been guided by the "E2" Report. In particular, where the claim is for a loss of profits where that loss was incurred regularly over a period of time, the Panel has selected the mid-point of those losses. Further, where the claim is for a loss of tangible assets, the Panel has selected 2 August 1990 (the date of Iraq's unlawful invasion and occupation of Kuwait) as the date of the loss, as that coincides with the claimants' date of loss of control over the assets in question. The Panel has also been guided by the "F1" Report. In particular, the Panel finds that 16 November 1990 (the mid-point of the occupation of Kuwait) is the appropriate date where losses were suffered or extraordinary expenses were paid regularly throughout the period of Iraq's occupation of Kuwait.

510. In the case of Mitsubishi, the Panel has recommended that awards be made with respect to 15 loss elements that belong to several loss types. While the Panel was able to estimate that Mitsubishi's compensable losses occurred between 2 August 1990 and 30 January 1991, it was not, in the case of several loss elements, able to establish precise loss dates. After due consideration, the Panel selects 31 October 1990, the mid-point of the period over which Mitsubishi's compensable losses occurred, as the date from which interest is to run.

511. In accordance with these determinations, the following is a summary of the recommendations for compensation of the Panel, along with a date from which interest awards will run:

Table 23. Third instalment claims -

Summary of recommendations by loss type with interest start dates

Name of claimant and loss element	US$ award amount	Interest start date
Genoyer SA		
compensation paid to others	12,911	31 October 1990 36/
Mitsubishi Corporation		
all loss elements	1,808,263	31 October 1990
Dowell Schlumberger (Middle East) Inc.		
unpaid accounts receivable	208,382	21 January 1992 37/
Shafi Bin Jaber & Bro's Co.		
loss of profit	404,985	24 March 1991
machinery	3,745,754	2 August 1990
tools and instruments	3,738	2 August 1990
tyres	29,864	2 August 1990
the Portables and their contents	38,473	2 August 1990
financial obligations with respect to real property	115,265	no interest 38/
Cape East Limited		
loss of tangible property	29,909	2 August 1990
evacuation costs	37,819	17 December 1990 39/
Halliburton Company		
decline in operating income	1,051,000	1 December 1990
Halliburton Geophysical Services, Inc.		
compensation paid to others	315,613	16 November 1990
contract losses	11,891,914	20 May 1992 40/
Halliburton Logging Services, Inc.		
contract losses	1,465,751	16 November 1990
Otis Engineering Corporation		
compensation paid to others	465,213	16 November 1990
loss of tangible property	83,798	2 August 1990
bank accounts, securities and other intangibles	307,455	16 November 1990

Name of claimant and loss element	US$ award amount	Interest start date
Halliburton Limited		
decline in operating income	965,286	7 January 1991
compensation paid to others	552,020	16 November 1990
loss of tangible property	989,213	2 August 1990
Wood Group Engineering Ltd.		
all loss elements	591,118	25 January 1991 41/
Dresser Industries Inc.	0	not applicable
National-Oilwell		
resale and cancellation costs	791,672	1 December 1990 42/
loss of profit	232,712	1 March 1991 43/
OGE Drilling Inc.		
loss of profit and insurance expenses	203,670	1 December 1990 44/
relief payments	19,200	4 September 1990 45/

C. Claim preparation costs

512. All claim figures in the body of this report are net of any individual claim preparation cost claims advanced by the claimants.

513. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

XIV. RECOMMENDATIONS

514. The following table is a summary showing net claims and the Panel's recommended awards.

Table 24. Summary showing net claims and the Panel's recommended awards

Claimant		Net Claim*	Recommendation (Original currencies)	Recommendation (US$)
Genoyer	(FF)	67,535,458	566	111
	(US$)	289,553	12,800	12,800
	(ID)	8,424,477	0	0
			Sub-total	12,911
Mitsubishi	(yen)	12,968,598,047	174,197,011	1,346,711
	(US$)	6,581,436	461,552	461,552
			Sub-total	1,808,263
Dowell	(US$)	1,591,315	208,382	208,382
Shafco	(SR1)	31,270,628	16,246,104	4,338,079
Cape	(US$)	759,000	37,819	37,819
	(£ stg.)	50,096	0	0
	(KD)	10,465	0	0
	(Dh)		109,797	29,909
			Sub-total	67,728
Halliburton Company	(US$)	1,454,549	1,051,000	1,051,000
Halliburton Geophysical	(US$)	12,687,588	12,207,527	12,207,527
Halliburton Logging	(US$)	3,990,436	1,465,751	1,465,751
Otis Engineering	(US$)	5,709,165	856,466	856,466
Halliburton Limited	(US$)	11,760,675	2,506,519	2,506,519
Wood Group	(KD)	244,853	78,475	271,540
	(£ stg.)	185,740	162,985	319,578
			Sub-total	591,118
Dresser	(US$)	342,819	0	0
NOW	(US$)	1,531,428	1,024,384	1,024,384
OGE	(US$)	415,911	222,870	222,870
Totals	(FF)	67,535,458	566	111
	(US$)	47,113,875	20,055,070	20,055,070
	(ID)	8,424,477	0	0
	(yen)	12,968,598,047	174,197,011	1,346,711
	(SR1)	31,270,628	16,246,104	4,338,079
	(£ stg.)	235,836	162,985	319,578
	(KD)	255,318	78,475	271,540
	(Dh)	0	109,797	29,909
	Total recommendation (US$)			26,360,998

*The total in United States dollars of amounts claimed in the Third Instalment, with claims stated in amounts other than United States dollars converted at the 1 August 1990 average monthly rate as reported in the United Nations Monthly Bulletin of Statistics, is US$186,671,158.

Geneva, 19 March 1999

(_Signed_) Mr. Allan Philip
Chairman

(_Signed_) Judge Bola Ajibola
Commissioner

(_Signed_) Mr. Antoine Antoun
Commissioner

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Notes

1/ "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

2/ "Criteria For Additional Categories of Claims" (S/AC.26/1991/7/Rev.1) ("decision 7").

3/ "Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures were also a Cause" (S/AC.26/1992/15), para. 6 ("decision 15"). Decision 15 emphasizes that for an alleged loss or damage to be compensable, "the causal link must be direct" (para. 3).

4/ "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation" (S/AC.26/1992/9) ("decision 9"). Decision 9 discusses the three main general categories of loss types that prevail among the category "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties.

5/ Decision 15, para. 5.

6/ "United Nations Compensation Commission Claim Form for Corporations and Other Entities (Form E): Instructions for Claimants", ("Form E") para. 6. This requirement is repeated at article 35, para. 1 of the Rules.

7/ Form E, para. 6.

8/ Genoyer claims FF 3,800,000 for this loss element. In response to a question from the Panel, Genoyer advised that this was calculated as 10 per cent of a total contract amount of FF 36,500,000. Genoyer has not sought to amend its claim to FF 3,650,000, nor has it explained the discrepancy between this figure and the amount claimed.

9/ Decision 7, para. 34(b).

10/ "Report and Recommendations made by the Panel of Commissioners Concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category "F" Claims)" (S/AC.26/1997/6) (hereinafter referred to as the "first 'F1' Report"), paras. 24-25.

11/ Decision 7, para. 34(b).

12/ Decision 7, para. 34(c).

13/ First 'F1' Report , para. 94.

14/ Ibid., paras. 95-96.

15/ Ibid.

16/ See, also, "Report and Recommendations made by the Panel of Commissioners Concerning the Third Instalment of 'F1' Claims" (S/AC.26/1999/7) para. 123, in which the "F1" Panel reaffirmed its finding that "compensation will only be recommended for claims for [proven] costs incurred in evacuating individuals from Kuwait, Iraq, Israel and Saudi Arabia."

17/ Decision 9, para. 6.

18/ The rate of exchange for the conversion of Japanese yen to United States dollars used as at 1 August 1990 is the average monthly rate as reported in the United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, April 1991.

19/ Rules, article 6, para. 5.

20/ The "E2" Report, paras. 193-197. Performance with respect to retention monies occurs, for the purpose of the determination of when a debt of Iraq arose, when the conditions precedent for its release have been satisfied.

21/ Together, the claimed amounts stated herein are equivalent to £ stg. 458,261, the net amount claimed by Cape.

22/ The amount recommended by the Panel is slightly less than the amount claimed based on exchange rates prevailing as of the date of the debit note.

23/ This is a corrected figure; the claimant's net total of US$3,996,166.00 contains two errors which have been corrected by the secretariat.

24/ The claimant's original net figure was US$11,735,341. This figure has been adjusted upwards by US$25,334 to include the portion of the interest claims that is not for interest on an award, but rather for loss of use of funds; see para. 393.

25/ *Factory at Chorzów* case, *Merits, Judgement No. 13, 1928, P.C.I.J., Series A, No. 17*, p.47.

26/ See *British Claims in the Spanish Zone of Morocco* case, Decision of 1 May 1925 (*United Kingdom* v. *Spain*) *United Nations Report of International Arbitral Awards*, vol. II, p. 615 *et seq.* for an example of the application of a deduction from a claim based on principles of unjust enrichment.

27/ The "E2" Report, para. 90. The "E2" Panel specifically stated that "performance" for purposes of determining the jurisdiction of the Commission "... can mean complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance.

28/ The "E2" Report, paras. 136-140.

29/ The "E2" Report, para. 90. The "E2" Panel specifically stated that "performance" for purposes of determining the jurisdiction of the Commission "... can mean complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance.

30/ The "E2" Report, paras. 136-140.

31/ Ibid.

32/ Together, the claimed amounts stated herein are equivalent to £ stg. 675,446, the total amount, net of claim preparation costs, claimed by Wood Group.

33/ *Factory at Chorzów* case, *Merits, Judgement No. 13, 1928, P.C.I.J., Series A, No. 17*, p.47.

34/ See British Claims in the Spanish Zone of Morocco case, Decision of 1 May 1925 (United Kingdom v. Spain) United Nations Report of International Arbitral Awards, vol. II, p. 615 et seq. for an example of the application of a deduction from a claim based on principles of unjust enrichment.

35/ The United Nations Monthly Bulletin of Statistics Currency conversion rates are the mid-point rates prevailing for each month.

36/ This date is the date on which the largest portion of the expenses were incurred.

37/ This date is 540 days after the issuance of the middle of the three compensable invoices, in accordance with the invoice due date.

38/ As discussed in para. 271, supra, Shafco's debt under the Financing Contract has been rescheduled to an unspecified date. The rescheduling agreement between Shafco and the lender does not state that Shafco will be charged interest on the amount owed to the lender. Because the lender is the ultimate beneficiary of any award with respect to this loss element and would not have been paid interest on the amount owed to it by Shafco, the Panel finds that no interest on the recommended award is required in this case.

39/ This is the date of the applicable debit note.

40/ The largest portion of this loss element represents payments that were to be made in 3 equal semi-annual instalments commencing 20 November 1991. The date selected is the middle of these 3 payment dates.

41/ This date is the estimated mid-point of the period over which Wood Group's compensable losses were incurred.

42/ This date is the estimated mid-point of the period over which OGE's profit and insurance losses were incurred.

43/ This is the estimated date on which NOW would have received payment.

44/ This date is the estimated mid-point of the period over which OGE's profit and insurance losses were incurred.

45/ This is the date when the relief payments were made.

Annex X

Decision concerning the third instalment of E1 claims taken by the Governing Council of the United Nations Compensation Commission at its 88th meeting, held on 24 June 1999 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the Report and Recommendations made by the Panel of Commissioners concerning the third instalment of "E1" claims, covering fourteen claims [1]; and a request from France for the withdrawal of one claim included in the Panel's report,

1. Approves the recommendations made by the Panel of Commissioners, with the exception of the one withdrawn claim and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report, with the exception of the one withdrawn claim. The aggregate amounts per country, as noted in paragraph 514 of the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Japan	1	0	106,841,181	1,808,263
Panama	1	0	1,591,315	208,382
Saudi Arabia	1	0	8,349,967	4,338,079

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* Previously issued as document S/AC.26/Dec.72 (1999).

[1] The text of the report appears in document S/AC.26/1999/13.

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
United Kingdom	3	0	13,863,073	3,165,365
United States	6	1	26,131,896	16,827,998
Total	12	1	156,777,432	26,348,087

3. Reaffirms that when funds become available payments shall be made in accordance with the decisions of the Governing Council concerning the priority of payment and payment mechanisms,

4. Recalls that when payments are made, Governments and international organizations shall, pursuant to the terms of decision 18 [S/AC.26/Dec.18 (1994)], distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Takes note of the withdrawal of the claim submitted by France, which was received after the panel signed the report and submitted its report and recommendations to the Governing Council, and

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

Annex XI

Sixth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure: corrections to approved claim awards*

1. The present report identifies, pursuant to article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), corrections to approved claim awards in claims category "A".

2. As noted in previous reports of the Executive Secretary 1/, corrections typically have been reported by the Commissioner panels in their reports and recommendations to the Governing Council. However, the category "A" Panel has concluded its work and no longer sits. Therefore, corrections to approved claim awards in category "A" are reported by the Executive Secretary to the Governing Council.

3. The following category "A" claims corrections are recommended.

I. CATEGORY "A" FAMILY MEMBER CLAIMS

4. As reported in the information note presented to the Governing Council at its thirty-first session held on 15-18 March 1999, the Commission ran a computer search across the entire spectrum of category "A" claims in order to ascertain those claimants whose claim forms contained family information but whose claim awards had been calculated at individual levels. The computer search detected 7,560, claims from 46 Governments and international organizations with information provided as to accompanying family members. A sample of corresponding paper claim forms showed that data entry errors had been made for all such claims when the information from the paper claim forms had been transferred to the computer diskettes.

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* Previously issued as document S/AC.26/1999/12.

1/ S/AC.26/1997/2, S/AC.26/1997/4, S/AC.26/1998/5, S/AC.26/1998/9 and S/AC.26/1998/14.

The result is that all 7,560 claims identified should have received awards at the family level rather than amounts for individual claimants.

5. Based on the above, compensation levels for these 7,560 claims should be raised from individual to family amounts. Corrections to the awards are included in the corrected total recommended award in section IV *infra*.

II. MATCHING OF HIGH CATEGORY "A" CLAIMS AGAINST CLAIMS IN CATEGORIES "B", "C" AND "D"

6. Decision 21 (S/AC.26/Dec.21 (1994)) of the Governing Council states that "any claimant who has selected a higher amount under category 'A' (US$4,000 or US$8,000) and has also filed a category 'B', 'C' or 'D' claim will be deemed to have selected the corresponding lower amount under category 'A'". The Commission has recently completed an enhanced cross-category matching programme that allows it to check claims data across several categories. In addition, the Commission has concluded the entry of claims data for all claims in categories "C" and "D". As a result, the Commission has now been able to apply the high "A" matching programme to all claims data in categories "B", "C" and "D" in order to determine those claims that were filed for higher amounts in category "A" and that also have claims in those categories. The "A" claims so identified need to be reduced to the lower amount in accordance with decision 21.

7. As part of the first round of payments all category "A" claims that have been awarded compensation were paid an initial amount of US$2,500. Because the Commission is making preparations to begin the second round of payments, it was important to identify all those claimants who have filed claims for higher amounts in category "A" but who are not entitled to receive more than the US$2,500 already distributed because they have filed claims in other categories. In this report, the results of the running of this application have been confined to those "A" claims awarded compensation in instalments one and two. The results of the high "A" matching programme for the remaining instalments will be reported in an article 41 report to be submitted to the Council at its thirty-third session in September 1999.

8. Claimants with claims that were filed for the higher amount in category "A" that have been found to have filed claims in other categories have had their claim amounts adjusted downward in accordance with decision 21. A total of 2,244 claims from 24 Governments and international organizations were detected by the high "A" matching programme. The adjusted claim awards have been included in the corrected total recommended awards in section IV *infra*.

III. CATEGORY "A" DUPLICATE CLAIMS

9. Having concluded the entry of claims data for claims in categories "C" and "D", and, as a result of running the enhanced matching programme, the Commission has been able to locate a number of duplicate claims within category "A" that had previously gone undetected. A total of 953 claims for 19 Governments have been found to be duplicates. This total includes those duplicate claims that have been reported by Governments. No compensation should be awarded for the duplicate claims and the total recommended awards have been revised accordingly.

IV. CATEGORY "A" CORRECTED AMOUNTS

10. The aggregate corrected amounts per country, by claim instalment, are as follows:

First instalment corrections

Country or International Organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
BAHRAIN	81,000.00	83,500.00
BANGLADESH	17,746,000.00	17,689,000.00
BRAZIL	527,500.00	531,500.00
EGYPT	61,334,000.00	61,476,000.00
FRANCE	992,500.00	989,500.00
GERMANY	271,500.00	270,000.00
INDIA	24,728,500.00	25,048,000.00
IRAN	590,500.00	580,500.00
IRELAND	359,500.00	356,500.00
KUWAIT	17,348,500.00	17,344,000.00
MOROCCO	216,000.00	242,000.00
NIGERIA	25,000.00	23,500.00
NORWAY	18,000.00	20,500.00
PAKISTAN	12,221,000.00	12,099,500.00
PHILIPPINES	2,192,500.00	2,195,000.00
REPUBLIC OF KOREA	435,000.00	437,500.00
ROMANIA	571,000.00	577,500.00
RUSSIAN FEDERATION	2,876,000.00	2,880,000.00
SRI LANKA	25,117,000.00	25,114,500.00
SUDAN	5,024,000.00	5,029,000.00
SYRIA	576,000.00	575,500.00
THAILAND	1,508,500.00	1,505,500.00
UNDP JERUSALEM	286,500.00	283,500.00

/...

UNITED KINGDOM	819,000.00	821,500.00
UNITED STATES OF AMERICA	887,000.00	888,000.00

Second instalment corrections

Country or International Organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
ALGERIA	47,500.00	43,000.00
AUSTRIA	49,000.00	53,000.00
BAHRAIN	52,000.00	54,500.00
BANGLADESH	51,519,000.00	51,329,500.00
BOSNIA-HERZEGOVINA	48,000.00	52,000.00
CANADA	721,500.00	737,000.00
CHINA	25,159,000.00	25,171,000.00
EGYPT	142,529,000.00	142,560,500.00
GREECE	28,500.00	25,500.00
INDIA	50,123,500.00	50,859,500.00
IRAN	50,266,000.00	50,403,500.00
ITALY	91,500.00	94,000.00
JORDAN	96,425,000.00	94,184,500.00
KUWAIT	87,523,500.00	87,520,500.00
MOROCCO	68,000.00	77,000.00
PAKISTAN	19,819,000.00	19,526,500.00
PHILIPPINES	5,767,500.00	5,763,000.00
REPUBLIC OF KOREA	80,500.00	77,500.00
SENEGAL	89,500.00	86,500.00
SOMALIA	79,000.00	81,500.00
SRI LANKA	77,278,500.00	77,298,500.00
SUDAN	14,464,500.00	14,458,500.00
THAILAND	4,294,000.00	4,297,500.00
TUNISIA	188,000.00	192,000.00
UNDP WASHINGTON	44,000.00	48,000.00
UNDP YEMEN	57,500.00	57,000.00
UNHCR BULGARIA	11,500.00	14,000.00
UNHCR GENEVA	15,500.00	12,500.00
UNITED KINGDOM	168,500.00	172,500.00

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Third instalment corrections

Country	Previous total recommended award (US$)	Corrected total recommended award (US$)
EGYPT	174,259,000.00	174,390,500.00
INDIA	16,131,000.00	16,993,000.00
IRAN	67,718,000.00	68,574,500.00
JORDAN	93,287,000.00	93,844,500.00
KUWAIT	104,627,000.00	104,632,000.00
PHILIPPINES	5,515,500.00	5,519,500.00
SRI LANKA	52,441,000.00	52,409,000.00
SUDAN	11,927,000.00	11,947,000.00
UNITED STATES OF AMERICA	165,500.00	168,000.00

Fourth instalment corrections

Country or International Organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
BAHRAIN	22,000.00	28,500.00
BANGLADESH	52,759,500.00	52,835,500.00
BOSNIA-HERZEGOVINA	3,541,000.00	3,545,000.00
BULGARIA	1,817,000.00	1,821,000.00
CANADA	434,500.00	439,500.00
EGYPT	207,354,000.00	207,798,000.00
ETHIOPIA	171,500.00	192,500.00
FRANCE	154,500.00	138,000.00
INDIA	144,880,000.00	148,425,500.00
IRAN	3,485,000.00	3,593,000.00
ITALY	181,500.00	184,000.00
JORDAN	17,642,500.00	17,837,500.00
LEBANON	3,911,500.00	5,724,000.00
MOROCCO	135,500.00	140,500.00
PAKISTAN	22,808,000.00	22,851,500.00
PHILIPPINES	30,591,000.00	30,558,000.00
ROMANIA	3,457,000.00	3,459,500.00
RUSSIAN FEDERATION	8,968,000.00	9,016,000.00
SOMALIA	509,000.00	515,500.00
SRI LANKA	71,978,500.00	71,729,500.00
SUDAN	10,222,000.00	10,243,000.00
SYRIA	26,352,000.00	26,612,500.00

THAILAND	2,597,500.00	2,597,500.00
TURKEY	6,302,000.00	6,297,000.00
UNHCR CANADA	49,500.00	56,000.00
UNHCR GENEVA	28,000.00	30,500.00
UNRWA GAZA	466,500.00	690,000.00
VIETNAM	24,834,500.00	24,838,500.00
YEMEN	25,565,500.00	25,645,000.00

Fifth instalment corrections

Country or International Organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
BANGLADESH	52,348,500.00	52,561,500.00
BOSNIA-HERZEGOVINA	3,528,000.00	3,528,000.00
BULGARIA	1,890,000.00	1,894,000.00
CANADA	390,500.00	409,000.00
CHINA	5,712,000.00	5,704,000.00
CZECH REPUBLIC	455,000.00	459,000.00
EGYPT	217,009,000.00	217,268,500.00
ETHIOPIA	224,000.00	226,500.00
FEDERAL REPUBLIC OF YUGOSLAVIA	3,794,500.00	3,790,500.00
INDIA	145,461,000.00	150,137,000.00
IRAN	3,753,000.00	3,835,500.00
ITALY	179,500.00	182,000.00
JORDAN	17,274,000.00	17,425,000.00
LEBANON	3,908,000.00	5,763,000.00
MOROCCO	105,500.00	108,000.00
PAKISTAN	23,178,000.00	23,185,000.00
POLAND	3,738,500.00	3,742,500.00
ROMANIA	3,548,000.00	3,552,000.00
RUSSIAN FEDERATION	8,312,000.00	8,328,000.00
SOMALIA	467,500.00	477,500.00
SRI LANKA	72,551,500.00	72,105,000.00
SUDAN	38,662,000.00	38,721,500.00
SYRIA	26,801,000.00	27,003,000.00
THAILAND	10,563,000.00	10,631,000.00
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	967,500.00	971,500.00

TURKEY	6,547,500.00	6,514,000.00
UNDP JERUSALEM	71,500.00	75,500.00
UNHCR CANADA	59,000.00	64,000.00
UNITED KINGDOM	1,306,000.00	1,311,000.00
UNRWA GAZA	541,000.00	754,000.00
YEMEN	29,181,000.00	29,208,500.00

Sixth instalment corrections

Country or International Organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
AUSTRALIA	64,500.00	64,500.00
BANGLADESH	66,182,000.00	66,288,500.00
BOSNIA-HERZEGOVINA	2,048,000.00	2,060,000.00
BRAZIL	616,500.00	619,000.00
CANADA	51,000.00	67,000.00
EGYPT	18,745,500.00	18,711,000.00
ETHIOPIA	90,000.00	94,000.00
FRANCE	27,000.00	24,500.00
INDIA	17,429,500.00	17,978,000.00
IRAN	5,838,000.00	5,626,500.00
ITALY	35,500.00	38,000.00
JORDAN	18,712,000.00	18,735,000.00
KUWAIT	17,173,000.00	17,166,500.00
LEBANON	410,000.00	540,000.00
MOROCCO	2,468,500.00	2,575,000.00
PAKISTAN	46,786,000.00	46,859,500.00
PHILIPPINES	61,012,000.00	60,951,000.00
REPUBLIC OF KOREA	61,000.00	63,500.00
RUSSIAN FEDERATION	3,384,000.00	3,396,000.00
SRI LANKA	36,889,500.00	36,643,000.00
SUDAN	512,000.00	509,500.00
SYRIA	5,218,500.00	5,285,500.00
THAILAND	2,248,500.00	2,260,500.00
TUNISIA	1,867,000.00	1,891,500.00
TURKEY	1,300,500.00	1,566,000.00
UNRWA GAZA	37,000.00	47,000.00
YEMEN	1,823,500.00	1,855,500.00

11. Based on the above corrections, the revised total recommended awards by instalment are as follows:

Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (US$) 2/	Corrected total recommended award (US$)
FIRST	189,328,500.00	189,638,000.00
SECOND	643,114,500.00	641,356,500.00
THIRD	531,696,500.00	534,103,500.00
FOURTH	732,579,500.00	739,203,000.00
FIFTH	782,481,000.00	789,889,000.00
SIXTH	319,664,500.00	320,542,000.00

2/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33 and 38 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995) and S/AC.26/Dec.38 (1996)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, and 57 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998) and S/AC.26/Dec.57 (1998)).

Annex XII

Decision concerning the correction of awards for category A claims pursuant to article 41 of the Provisional Rules for Claims Procedure taken by the Governing Council of the United Nations Compensation Commission at its 88th meeting, held on 24 June 1999 at Geneva*

The Governing Council,

Having received, in accordance with article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) ("the Rules"), a report by the Executive Secretary covering 10,757 claims in category "A", 1/

1. Decides, pursuant to article 41 of the Rules, to correct the amounts of the approved awards for Governments and international organizations. 2/ The aggregate corrected amounts per country, by claim instalment, are as follows:

First instalment corrections

Country or International Organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
BAHRAIN	81,000.00	93,500.00
BANGLADESH	17,746,000.00	17,689,000.00
BRAZIL	527,500.00	531,500.00
EGYPT	61,334,000.00	61,476,000.00
FRANCE	992,500.00	989,500.00

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* Previously issued as document S/AC.26/Dec.71 (1999).

1/ The text of the report appears in document S/AC.26/1999/12.

2/ In conformity with the provisions on confidentiality in the Provisional Rules For Claims Procedure (articles 30, paragraph 1, and 40, paragraph 5), a table containing the breakdown of the corrected amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government separately.

GERMANY	271,500.00	270,000.00
INDIA	24,728,500.00	25,048,000.00
IRAN	590,500.00	580,500.00
IRELAND	359,500.00	356,500.00
KUWAIT	17,348,500.00	17,344,000.00
MOROCCO	216,000.00	242,000.00
NIGERIA	25,000.00	23,500.00
NORWAY	18,000.00	20,500.00
PAKISTAN	12,221,000.00	12,099,500.00
PHILIPPINES	2,192,500.00	2,195,000.00
REPUBLIC OF KOREA	435,000.00	437,500.00
ROMANIA	571,000.00	577,500.00
RUSSIAN FEDERATION	2,876,000.00	2,880,000.00
SRI LANKA	25,117,000.00	25,114,500.00
SUDAN	5,024,000.00	5,029,000.00
SYRIA	576,000.00	575,500.00
THAILAND	1,508,500.00	1,505,500.00
UNDP JERUSALEM	286,500.00	283,500.00
UNITED KINGDOM	819,000.00	821,500.00
UNITED STATES OF AMERICA	887,000.00	888,000.00

Second instalment corrections

Country or International Organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
ALGERIA	47,500.00	43,000.00
AUSTRIA	49,000.00	53,000.00
BAHRAIN	52,000.00	54,500.00
BANGLADESH	51,519,000.00	51,329,500.00
BOSNIA-HERZEGOVINA	48,000.00	52,000.00
CANADA	721,500.00	737,000.00
CHINA	25,159,000.00	25,171,000.00
EGYPT	142,529,000.00	142,560,500.00
GREECE	28,500.00	25,500.00
INDIA	50,123,500.00	50,859,500.00
IRAN	50,266,000.00	50,403,500.00
ITALY	91,500.00	94,000.00
JORDAN	96,425,000.00	94,184,500.00
KUWAIT	87,523,500.00	87,520,500.00
MOROCCO	68,000.00	77,000.00
PAKISTAN	19,819,000.00	19,526,500.00

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PHILIPPINES	5,767,500.00	5,763,000.00
REPUBLIC OF KOREA	80,500.00	77,500.00
SENEGAL	89,500.00	86,500.00
SOMALIA	79,000.00	81,500.00
SRI LANKA	77,278,500.00	77,298,500.00
SUDAN	14,464,500.00	14,458,500.00
THAILAND	4,294,000.00	4,297,500.00
TUNISIA	188,000.00	192,000.00
UNDP WASHINGTON	44,000.00	48,000.00
UNDP YEMEN	57,500.00	57,000.00
UNHCR BULGARIA	11,500.00	14,000.00
UNHCR GENEVA	15,500.00	12,500.00
UNITED KINGDOM	168,500.00	172,500.00

Third instalment corrections

Country	Previous total recommended award (US$)	Corrected total recommended award (US$)
EGYPT	174,259,000.00	174,390,500.00
INDIA	16,131,000.00	16,993,000.00
IRAN	67,718,000.00	68,574,500.00
JORDAN	93,287,000.00	93,844,500.00
KUWAIT	104,627,000.00	104,632,000.00
PHILIPPINES	5,515,500.00	5,519,500.00
SRI LANKA	52,441,000.00	52,409,000.00
SUDAN	11,927,000.00	11,947,000.00
UNITED STATES OF AMERICA	165,500.00	168,000.00

Fourth instalment corrections

Country or International Organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
BAHRAIN	22,000.00	28,500.00
BANGLADESH	52,759,500.00	52,835,500.00
BOSNIA-HERZEGOVINA	3,541,000.00	3,545,000.00
BULGARIA	1,817,000.00	1,821,000.00
CANADA	434,500.00	439,500.00
EGYPT	207,354,000.00	207,798,000.00
ETHIOPIA	171,500.00	192,500.00
FRANCE	154,500.00	138,000.00
INDIA	144,880,000.00	148,425,500.00
IRAN	3,485,000.00	3,593,000.00
ITALY	181,500.00	184,000.00

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JORDAN	17,642,500.00	17,837,500.00
LEBANON	3,911,500.00	5,724,000.00
MOROCCO	135,500.00	140,500.00
PAKISTAN	22,808,000.00	22,851,500.00
PHILIPPINES	30,591,000.00	30,558,000.00
ROMANIA	3,457,000.00	3,459,500.00
RUSSIAN FEDERATION	8,968,000.00	9,016,000.00
SOMALIA	509,000.00	515,500.00
SRI LANKA	71,978,500.00	71,729,500.00
SUDAN	10,222,000.00	10,243,000.00
SYRIA	26,352,000.00	26,612,500.00
THAILAND	2,597,500.00	2,597,500.00
TURKEY	6,302,000.00	6,297,000.00
UNHCR CANADA	49,500.00	56,000.00
UNHCR GENEVA	28,000.00	30,500.00
UNRWA GAZA	466,500.00	690,000.00
VIETNAM	24,834,500.00	24,838,500.00
YEMEN	25,565,500.00	25,645,000.00

Fifth instalment corrections

Country or International Organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
BANGLADESH	52,348,500.00	52,561,500.00
BOSNIA-HERZEGOVINA	3,528,000.00	3,528,000.00
BULGARIA	1,890,000.00	1,894,000.00
CANADA	390,500.00	409,000.00
CHINA	5,712,000.00	5,704,000.00
CZECH REPUBLIC	455,000.00	459,000.00
EGYPT	217,009,000.00	217,268,500.00
ETHIOPIA	224,000.00	226,500.00
FEDERAL REPUBLIC OF YUGOSLAVIA	3,794,500.00	3,790,500.00
INDIA	145,461,000.00	150,137,000.00
IRAN	3,753,000.00	3,635,500.00
ITALY	179,500.00	182,000.00
JORDAN	17,274,000.00	17,425,000.00
LEBANON	3,908,000.00	5,763,000.00
MOROCCO	105,500.00	108,000.00
PAKISTAN	23,178,000.00	23,185,000.00
POLAND	3,735,[illegible]00.00	3,742,500.00

ROMANIA	3,548,000.00	3,552,000.00
RUSSIAN FEDERATION	8,312,000.00	8,328,000.00
SOMALIA	467,500.00	477,500.00
SRI LANKA	72,551,500.00	72,105,000.00
SUDAN	38,662,000.00	38,721,500.00
SYRIA	26,801,000.00	27,003,000.00
THAILAND	10,563,000.00	10,631,000.00
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	967,500.00	971,500.00
TURKEY	6,547,500.00	6,514,000.00
UNDP JERUSALEM	71,500.00	75,500.00
UNHCR CANADA	59,000.00	64,000.00
UNITED KINGDOM	1,306,000.00	1,311,000.00
UNRWA GAZA	541,000.00	754,000.00
YEMEN	29,181,000.00	29,206,500.00

Sixth instalment corrections

Country or International Organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
AUSTRALIA	64,500.00	64,500.00
BANGLADESH	66,182,000.00	66,188,500.00
BOSNIA-HERZEGOVINA	2,048,000.00	2,060,000.00
BRAZIL	618,500.00	619,500.00
CANADA	51,000.00	[illegible]
EGYPT	16,745,500.00	[illegible]
ETHIOPIA	40,000.00	[illegible]
FRANCE	27,000.00	24,500.00
INDIA	20,428,500.00	20,918,000.00
IRAN	5,836,000.00	5,826,500.00
ITALY	35,500.00	38,500.00
JORDAN	18,712,000.00	18,735,000.00
KUWAIT	19,173,000.00	19,166,500.00
LEBANON	410,000.00	540,000.00
MOROCCO	2,465,500.00	2,575,000.00
PAKISTAN	46,786,000.00	46,859,500.00
PHILIPPINES	61,012,000.00	60,951,000.00
REPUBLIC OF KOREA	61,000.00	63,500.00
RUSSIAN FEDERATION	3,384,000.00	3,396,000.00
SRI LANKA	36,889,500.00	36,643,000.00

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SUDAN	512,000.00	509,500.00
SYRIA	5,218,500.00	5,285,500.00
THAILAND	2,248,500.00	2,260,500.00
TUNISIA	1,867,000.00	1,891,500.00
TURKEY	1,300,500.00	1,566,000.00
UNRWA GAZA	37,000.00	47,000.00
YEMEN	1,823,500.00	1,855,500.00

2. Based on the above corrections, the revised total recommended awards by instalment are as follows:

Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (US$)3/	Corrected total recommended award (US$)
FIRST	189,328,500.00	189,638,000.00
SECOND	643,114,500.00	641,356,500.00
THIRD	531,696,500.00	534,103,500.00
FOURTH	732,579,500.00	739,203,000.00
FIFTH	782,481,000.00	789,889,000.00
SIXTH	319,664,500.00	320,542,000.00

3. Directs the Executive Secretary to effect the above corrections and to provide copies of the tables containing the breakdown of the amounts to be paid to the affected individual claimants to each respective Government and international organization.

3/The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33 and 38 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995) and S/AC.26/Dec.38 (1996)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, and 57 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998) and S/AC.26/Dec.57 (1998)).

Annex XIII

Decision concerning the priority of payment and payment mechanisms for the second phase of payment taken by the Government Council of the United Nations Compensation Commission at its 88th meeting, held on 24 June 1999 at Geneva*

The Governing Council,

Desiring to fulfill the purposes of decision 17 ((S/AC.26/Dec.17 (1994)) to provide priority of payment to claimants in categories "A", "B" and "C", while also providing meaningful compensation to claimants in categories "D", "E" and "F" at the earliest possible date, and

Further desiring to achieve full payment of all claims in categories "A" and "C" no later than the end of 2002, and earlier if possible,

Decides that notwithstanding paragraph 6 of decision 17, after the payments provided for in paragraph 2 of decision 17 have been made, the funds available to the Commission for the payment of claims shall be allocated as follows until the principal amounts of all claims in categories "A" and "C" have been paid in full:

(a) The Executive Secretary shall transfer funds to each appropriate government in respect of approved claims in all categories. Such transfers shall be made when there are funds in the Compensation Fund sufficient to make a payment of US$25,000 (or the unpaid principal amount of the award if less) in respect of each approved claim. Once the above amount has been paid on all awards of claims in categories "A" and "C" and all approved claims in categories "D", "E" and "F", the amount for further payments on all claims shall increase to US$75,000 (or the unpaid principal amount of the award if less);

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* Previously issued as document S/AC.26/Dec.73 (1999).

(b) In making payments under subparagraph (a), the Executive Secretary shall make payments on an instalment-by-instalment basis. Payments on instalments of claims in each category shall be made in the same order in which the instalments of claims themselves were approved by the Governing Council. The Executive Secretary may make payments to multiple instalments of claims at the same time; and

(c) That if upon the payment of the amount referred to in subparagraph (a) above on any claim, that claim will have a remaining principal balance of US$1,000 or less, the Executive Secretary may pay the full remaining principal balance of the claim,

Expresses its willingness to consider the special circumstances pertaining to successful environmental monitoring and assessment claims and, in this context, to consider addressing the level and priority of payments to be made in respect of such claims. At the same time, the Governing Council reaffirms its commitment to the rapid resolution of the category "A" and category "C" payment process,

Expresses its intention to consider before the end of the second phase of payment the rules that will apply for making further payments on those claims in categories "D", "E" and "F" that will have unpaid balances remaining once the second phase of payments has been completed, and the amounts of such payments.
